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Transcript of the Evidence and Proceedings
At a Hearing Before the Commission, 5, c.1



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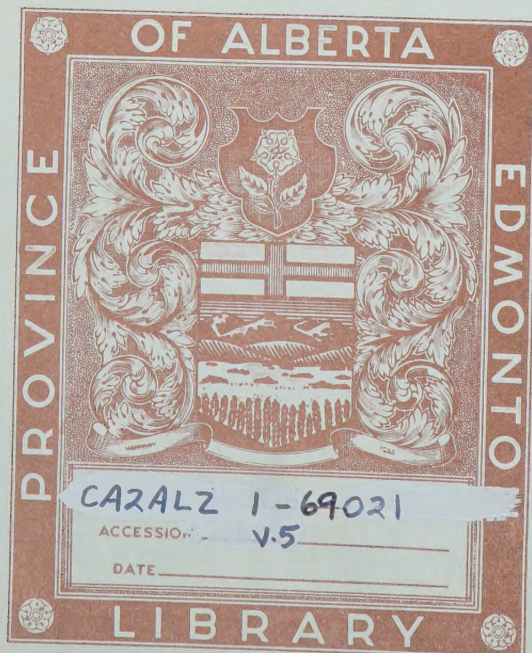
TRANSCRIPT OF THE EVIDENCE AND PROCEEDINGS
AT A HEARING BEFORE THE COMMISSION TO
INQUIRE INTO THE SUBMISSION OF THE OMBUDSMAN
DATED OCTOBER 10, 1969, HELD IN THE JUBILEE
AUDITORIUM, IN THE CITY OF EDMONTON, PROVINCE
OF ALBERTA, ON JUNE 26th, 1970, TAKEN IN
SHORTHAND AND STENOGRAPHY BY DOUG AYERS AND
R. L'HEUREUX, OFFICIAL COURT REPORTERS.


THE HON. C. C. McLAURIN,.....	COMMISSIONER,
W. A. MCGILLIVRAY, Esq., Q.C.,....	Counsel for the Commission,
J. C. CAVANAGH, Esq., Q.C.,.....	Counsel for Mr. R. J. Philipzyk,
D. H. BOWEN, Esq., Q.C.,.....	Counsel for Edmonton Real Estate Board Co-operative Listing Bureau Limited,
A. B. WEIR, Esq.,.....	Counsel for Ombudsman,
W. ALAN SHORT, Esq.,.....	Secretary.

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W. ALAN SHORT, Esq.,.....	Secretary.

HEARING IS RESUMED 26 JUNE 1970.

J.P. WALSH, takes the stand, examined by MR. MCGILLIVRAY:

THE COMMISSIONER: Mr. Walsh, you realize you
are still under oath?

A Yes, sir.

Q MR. MCGILLIVRAY: I think yesterday, sir, we
had been describing, or you had been describing the
meeting of the Ethics Committee on the 17th of
December, 1965?

A Yes, sir.

Q I think we got to the point where there was the inter-
change between Mr. Larsen and Mr. Philipzyk, both
of whom, one of whom called the other a liar,
and the other returning the compliment, and you've
described how Mr. Larsen got up, and I think, to
your way of thinking, advanced on Mr. Philipzyk,
and they were, you felt, behind you, and you hoped
you wouldn't be involved in any melee?

A That's right, sir.

Q Now, following that, what occurred?

A Some persons, and I'm sorry I cannot say who they
were, because they were behind, they went behind
me, apparently intervened, and Mr. Philipzyk was asked

- A (Cont) to leave the room, was taken outside.
- Q You say was taken outside, did somebody accompany him? Was that Mr. Haugen?
- A I'm sorry, I wouldn't know, because I just continued to, I didn't turn around to see. The door was behind me.
- Q Where was Mr. Larsen at this time?
- A He was behind me, also.
- Q Had he sat down yet?
- A Well, he went back and sat down, yes.
- Q Did Mr. Philipzyk ever sit down for the time that this liar business went back and forth?
- A Not to my knowledge.
- Q Why would they ask Mr. Philipzyk to leave rather than Mr. Larsen; I'm just not quite sure about that?
- A Neither am I, sir.
- Q Did you hear any discussion or request that Mr. Philipzyk leave?
- A No, I didn't.
- Q Well, did Mr. Haugen go out with Mr. Philipzyk, do you know that, sir?
- A No, I don't.
- Q What happened after Mr. Philipzyk left the meeting?
- A They, Mr. Larsen and Mr. Murray, started to recount events that happened in their office.

Q Now, Mr. Murray is the other branch manager of Kellough's?

A Yes, sir.

Q Yes?

A And --

Q This was unrelated to the complaint?

A That's right. And as far as I could see, none of the conversation had any bearing on the subject at hand, nor was there any evidence produced to show that the things they were talking about was true.

Q Now, you are Mr. Philipzyk's representative, did you have any comment on this, or you know, say to the Chairman, well here they are complaining he did this and that in the office, what's that got to do with this case?

A Well, I tried to point where they were discussing things which were, in my view, irrelevant. I proceeded to defend Mr. Philipzyk, and to assure them that, to my knowledge, there was no file involving a real estate transaction, which shows that Mr. Philipzyk was guilty of anything. Contrary to the Real Estate Licensing Act or anything of this nature. And, Mr. Haugen intervened and said that there were two complaints that he had received, and then he admitted that there were verbal complaints,

A (Cont) there was no records of them.

Q Yes. Well, let me get this straight; you were arguing that even if Philipzyk had said these things about Kellough, that this wasn't anything that the Real Estate Board should deal with?

A No, I didn't --

Q I'm sorry, sir --

A I didn't question, at that time, the rights of the Ethics Committee to be dealing with the subject that had been brought up.

Q Yes?

A I merely defended the position, as I knew Mr. Philipzyk's transactions in our office, that there was no file of complaints. And as far as I have been able to ascertain, which I have before he was employed with us, that there was no file involving anything fraudulent or dishonest involving a real estate transaction in the office of the Real Estate Board, nor of the government.

And this is the position I was trying to defend, because at this time it appeared to me that although the argument -- or, rather, the premise on which the whole Hearing was based has been abandoned.

Q Well, you say the Hearing, at this point, got down to a discussion of whether this is a good fellow or not?

A Correct.

Q You were saying, well, he's got no record as far as I'm concerned, or as far as your inquiry is concerned?

A Correct, sir.

Q How long did this go on after Mr. Philipzyk left?

A Oh, I would think twenty-five minutes, possibly. Of course, it's rather difficult to estimate time in a situation like that.

Q Now, sir, that meeting occurred on the 18th --

A 17th.

Q -- 17th of December, and the following day you went to the trouble of writing out a synopsis of the meeting as it occurred and it appeared to you?

A Correct.

Q And is this it, sir?

A Yes, sir. Yes, I recognize it.

Q And you sent that to the --

A To Mr. Shaske, the President.

Q The President of the Edmonton Real Estate Board Co-operative Listing Bureau Limited, on the 20th of December?

A Correct. The 17th was Friday.

Q On Saturday you did your memorandum of what occurred, and then on Monday you wrote the letter in total?

A That's right. And the object of that was that I knew there would be a Directors meeting to confirm, to ratify the position of the Ethics Committee, and I wanted this letter to be there as soon as possible in order that -- and furthermore, the President is automatically a member of every committee.

Q Now, the President, Mr. Shaske, had he been at the Ethics Committee meeting?

A No.

Q May this be marked, sir, this is, I'll read you this letter, and Mr. Walsh's memorandum of that meeting, made the day after, sir. This letter, dated December the 20th, 1965, is to Mr. Ed Shaske, President, the Edmonton Real Estate Board Co-operative Listing Bureau Limited, Edmonton re:

"Complaint H.R. Kellough vs
R.J. Philipzyk.

Dear Ed,

I am writing to you to see if it might be possible to find some method of resolving the above dispute other than by imposing sanctions on either party.

As the representative of Mr.

Q

(Cont)

Philipzyk I must do everything in my power to see that his defence is properly presented.

Even if he received as much as a reprimand I must appeal to the Directors and if necessary to the general membership.

I am attaching a copy of my report of the hearing held last Friday and I can only say that I would consider it unfortunate if this type of thing has to be handed to each director and eventually to each member entitled to vote.

Mr. Kellough seems to think that having made a complaint he now has a license to range far and wide in his accusations against Mr. Philipzyk, even to go so far as to refer to him as "Bastard".

If you could get Mr. Kellough to withdraw his complaint I believe I could get Mr. Philipzyk to consider the matter closed.

Sincerely,

P. J. Walsh.

P.S. Although I have used office stationery -

Q

(Cont)

"we are not involved."

And then Mr. Walsh's report of what occurred at the meeting, and this was typed up the next day:

"Report of J. P. Walsh, representing J. J. Philipzyk at Ethics Committee Hearing Friday, December 17th, 1965, at 4.00 p.m. in the Edmonton Real Estate Board Building - 10515 - Princess Elizabeth Avenue, Edmonton.

Mr. Philipzyk had been ordered to appear before the Ethics Committee to hear evidence on the ethics complaint issued against him by Mr. H. R. Kellough.

Besides the Committee there were present at the Meeting - Philipzyk, Walsh, Kellough, Nels Larsen, Joe Olthuis, and Norm Murray; the last three being introduced as witnesses.

The complaint against Mr. Philipzyk was introduced by the reading of a letter from Mr. Kellough dated June 8th, 1965. Also introduced was what was said to be an exact copy of the ledger sheets of Mr. Philipzyk's account with Kellough Realty from January 10th, 1961 to May 29th, 1964,

Q

(Cont)

"with a letter from Mr. Kellough, dated September 7th, 1965, to the Board.

At this point the Chairman asked the Committee to consider the specific complaint which concerned certain statements made to two employees of Mr. Kellough during 1965. The Chairman read a letter which had just been passed to him by Mr. Kellough and he advised us that it was signed by a Mrs. Magda Hansen and Joe Olthuis but was not dated. On questioning Mr. Kellough said it had been written about a month previously which would be about the middle of November. This letter is supposed to have stated that the alleged conversation of Mrs. Hansen and Joe Olthuis with Mr. Philipzyk took place some time in August. Mr. Kellough's letter of complaint was dated June 8th and this was pointed out to the committee. This letter was not passed to me or to Mr. Philipzyk for examination."

Now, just on that point, sir, we are clear that the letter was read out loud by the Chairman?

A

Yes. I shouldn't probably have said, have made an issue of that.

Q If you would have asked to have it in your hand --

A It probably would have been done, sir.

Q "Mrs. Magda Hansen was not present to be questioned."

You were aware why she wasn't present, Mr. Walsh, were you not?

A Yes.

Q "I pointed out that it seemed strange that two witnesses would remember word for word a conversation which is supposed to have taken place six months before and yet be two months out on the date of the alleged conversation. I would like to have had the opportunity to ask Mrs. Hansen whether she had worked on the document with Mr. Olthuis or whether it had been just handed to her for signature. Mr. Olthuis said that everything in the letter was exactly as it had been said. It was my feeling that Mr. Philipzyk was not allowed sufficient time to know who the witnesses were and inasmuch as this was the specific complaint the statement of the witnesses should have been presented before the hearing was proceeded with."

And again on that, sir, do you not think that Mr.

Q (Cont) Philipzyk knew that it was the conversation that he had had with Mrs. Hansen, whatever it might have been, was going to be the subject of the complaint before it ever got to that meeting?

A No, I don't. The names of the people were not disclosed, and under By-law 181, the nature of the complaint is supposed to be in their hands, although I was not particularly aware of that at the time.

Q Tell me this, if you have Mr. Kellough's two letters of June and September, in which he complains about Philipzyk making derogatory remarks about him, to two of his employees --

A Yes, sir?

Q -- you say, sir, that when you and Mr. Philipzyk went to that meeting you didn't know who the employees were or when the remarks were supposed to be made?

A That's right.

Q Tell me, Mr. Walsh, occasionally we run into that in the legal business, but we then ask for particulars. In other words, I just wonder why you wouldn't call up and say, what are we talking about here. Call up the secretary or Mr. Kellough and say what conversations are you talking about, who is this man supposed to have spoken to?

A Well, it further points out, sir, the serious thing such as defamation should not be handled by amateurs.

Q But what you are saying to me, Mr. Walsh, is that you did not make any inquiry from anybody, either in the Board or from Kellough?

A No, nor did the Ethics Committee, apparently.

Q All right, sir. Now then, I am reading on:

"The Committe then turned to an examination of the account of Mr. Philipzyk and it now became apparent that Mr. Nels Larsen and Mr. Norm Murray were present at the meeting not as witnesses in this complaint but as former branch managers of Mr. Philipzyk and they referred to many disputes in their offices which had no relation to the complaint. I felt they should not have been present expecially since they made some allegations which were completely unsupported."

Now, Mr. Walsh, just apart from the irrelevant matters that they brought up, such as saying, I suppose, on one occasion or another this man did this or that, something that they didn't have anything to do with this, would they not be able to testify -- or, let me put it this way, did they

Q (Cont) not testify to the fact that Mr. Philipzyk got monthly statements showing the standing of his account each month?

A I don't recall that they got into the matter of monthly statements, as they did at this Hearing.

Q All right, then. Reading on:

"Mr. Kellough talked at great length in support of his statements of June 8th and September 7th and at one point referred to Mr. Philipzyk as a 'Bastard'.

I felt that it was regrettable that when Mr. Kellough referred to Mr. Philipzyk as a 'Bastard' that the Committee did not ask Mr. Kellough for an apology or even to withdraw his statement.

At one point Mr. Philipzyk was questioned by a member of the Committee as to the circumstances surrounding his leaving Kellough Realty. As he was speaking Mr. Nels Larsen shouted 'That's a lie'. Mr. Philipzyk retaliated with 'You're the liar'. At this point Mr. Larsen left his seat and proceeded toward Mr. Philipzyk to attack him physically. Mr. Philipzyk retreated and the Committee restrained both men. Although

Q

(Cont)

"Mr. Larsen was the aggressor and in my view had no right to be at the meeting, Mr. Philipzyk was asked to wait outside and did so until the end of the meeting, when he was asked to come back in for a few minutes. I could only hope that having witnessed a demonstration of attempted violence by Mr. Larsen that the Committee would reason that it was not unusual that neither Mr. Philipzyk nor any other person could long remain in the employ of a company under such a man.

In his complaint Mr. Kellough made it clear that he is not asking the Board to do anything about any money owing to him, and he reiterated this at the meeting.

I asked Mr. Kellough on two occasions what he wanted to be the outcome of the hearing and he stated that he did not want the Board to cancel Mr. Philipzyk's membership but only to stop Mr. Philipzyk from talking about him.

While I was attempting to say a few words in defence of Mr. Philipzyk's -- "This word is "actuation".

A Performance.

Q No, the word is actuation.

A That's what it says. That would be by performance.

Q "While I was attempting to say a few words in defence of Mr. Philipzyk's actuation as a salesman for me during the past year and a half, Mr. Kelly Haugen told the Committee that there had been two complaints from members. He said they were verbal and my feeling is that they could not help but prejudice the thinking of the Committee."

Did Mr. Haugen give any particulars of those complaints, or did he just mention that there were some?

A I don't recall that he went into detail about it.

Q He just said there had been two complaints?

A Yes. If I can recall it.

Q "Mr. Kellough mentioned several times that Mr. Philipzyk owed money to his old company, Trotter, McIntyre & Kellough. I told him that that Company had owed \$635 to one of our salesmen for three years during which time the salesman did not even receive a statement; and that when I wrote to the Board about it they said they did not have

Q (Cont)

"jurisdiction to intervene. Mr. Kellough asked what that had to do with him and I replied that he was the Agent of the Company. This debt to our salesman was settled in 1965 at 50 cents on the dollar.

The Chairman of the Ethics Committee made a statement that he knew for a fact that Mr. Kellough had lost \$40,000.00 through advances to salesmen. In my view this statement could only tend to present Mr. Kellough to the other members of the Committee as a kindly Santa Claus."

I may ask you this, Mr. Walsh, just at that point, it's pretty evident from the statements that have been furnished here, and which were furnished at that Ethics Committee meeting, that Mr. Kellough's company had made substantial advances to Mr. Philipzyk; that's plain, isn't it?

A Yes, sir.

Q Just from those statements alone, would it be fair to say that Mr. Kellough had been generous in his treatment of Philipzyk, or not?

A Might I refer, sir, to a letter from Mr. Walker, of the Commissioner's Office, dated November 30th, 1964,

A (Cont) in reply to a letter from me, regarding this \$635:

"Since receiving your letter I discussed this complaint with Mr. Halper (phonetic), of Christenson Morrison & Co., Chartered Accountants, who have been acting as liquidator on the voluntary liquidation of Trotter, McIntyre & Kellough Ltd., and he expects within a month from now to have reached some conclusion concerning payment of commissions owing to ex-salesmen, plural, of Trotter, McIntyre & Kellough Ltd."

Q Now, you are talking, sir, about another company, the name of which is Trotter, McIntyre & Kellough?

A Limited. And which Mr. Kellough has also accused Mr. Philipzyk of owing money to.

Q Well, what company, that other company, was wound up, was it not, sir, and this was on the winding up that the liquidator, apparently -- there was what - 50 cents on the dollar paid?

A It went into liquidation, I believe, in 1961. This letter is dated 1964. Apparently there were a number of salesmen who were not paid. And my information was that two of my men who had money coming called on the chartered accountant, and they

A (Cont) were told that they would not receive any money until all the money that had been collected from other salesmen who owed money had been collected from these other salesmen who had owed money, which had been given to them as advances.

THE COMMISSIONER: We're getting a little far afield now, aren't we?

Q MR. MCGILLIVRAY: Yes, sir. But you are, in effect, saying that as Mr. Kellough had been a shareholder in this other company --

A -- he was not only a shareholder, he was the agent. And an agent to the Edmonton Real Estate Board Co-operative Listing Bureau Limited. They had certain rules regarding certificate of solvency and so on. And the definition of solvency was that at any given moment the Board was entitled to know that everybody concerned had been paid, and that the company was in the position to be paid. Now, I know for a fact that approximately \$600 from that company was not paid by the company, because the company was not in a position to release the money, and in order to be in good standing on the Board, he gave a personal cheque, not a cheque from Trotter, McIntyre & Kellough.

Q Well, Mr. Walsh, it seems to me that you are being

Q (Cont) critical of Mr. Kellough personally, because he was associated with another company, which, on winding up, turned the assets and liabilities over to auditors, and said now collect from those who owe us money, pay those to whom we owe money?

A No, I am being quite impersonal about this, sir. This is a matter, this is a matter of a man who gives advances, and you know some companies don't give advances, but some companies give advances to attract salesmen. And they should expect some risk in this field.

Q All right. Now, certainly one wouldn't describe Mr. Philipzyk as a crack salesman?

A Pardon?

Q It's fair to describe Mr. Philipzyk as other than a crack salesman?

A Well, six months --

Q Well, now, Mr. Walsh, let's be -- you can take any period, that depends on the sales, what happened then?

A He earned \$625 a month, which I think is pretty good.

Q Just answer my question. Do you describe Mr. Philipzyk as a crack salesman?

A Obviously, as good as average.

Q All right. Now, my question to you was, in the advances from 1961 to 1964, that Mr. Kellough made to Mr. Walsh --

A To Mr. Philipzyk.

Q -- to Mr. Philipzyk, I'm sorry, does that statement indicate generosity on his part, in your view?

A Well, a man who is in business, it's sometimes good policy.

Q Tell me, now, you have your statements here, sir, of your dealings with Mr. Philipzyk?

A Yes, sir.

Q Could we look at those for a moment?

Can we start in July of '64?

A Yes, sir.

Q Now, first of all will you tell the Commissioner what advances you made?

A None, sir, at anytime.

Q You made no advances at all?

A None whatever.

Q Now, Mr. Walsh, this is the statement of Mr. Kellough's, which has been confirmed as being accurate, as far as it goes. There is some talk about this other commission in respect, in respect to particular transactions, but this statement is conceded to be accurate. In January of '61, January the 10th,

Q (Cont) an advance of \$200 was made, that's when he came to work first with this company. On January the 26th, another hundred dollars is paid in advance. There's a dollar for luncheon and 8.50 for group insurance advance that month. There are no commissions earned.

In February, again there is an advance of \$200 and \$100, and group insurance of 8.50. And in that month there are commissions of \$300.

In March there is \$100,\$200, advance, and no commissions. And in April 150, 50, and \$200. And again, no commissions earned.

A If I might just comment on this, sir.

These commissions, which, one, two, three, four, five, in a group here, obviously originated back here when the advances were made. And if these deals were sound, and there were no conditions in the offers to purchase, and the deposit was substantial, then Mr. Kellough would feel justified in making advances.

THE COMMISSIONER: Mr. McGillivray, I am fully acquainted with these statements. If an opinion has to be formed as to the generosity or lack of it, I make the opinion. I'm not interested in anybody

THE COMMISSIONER: (Cont) else's opinion.

Q MR. MCGILLIVRAY: All right, sir. Well, let's just push on. All this came out of your statement:

"In my view this statement could only tend to present Mr. Kellough to the other members of the Committee as a kindly Santa Claus."

That being the comment that somebody said he lost some \$40,000.00 in advances to salesmen. Reading on:

"During the hearing no attempt was made to examine Mr. Olthuis on the wording of the letter he had written describing the conversation with Mr. Philipzyk six months before. A very important point is that no attempt was made to establish that Mrs. Magda Hansen had actually signed the letter and as she was not present she could not be examined. This could only mean that it was the word of Mr. Olthuis against that of Mr. Philipzyk."

Now, that was your report written at the time, and what seemed to you to be what happened at that meeting, Mr. Walsh?

A That's right, sir.

Q May that letter, sir, of the 20th of December, and report, be marked as an exhibit?

THE COMMISSIONER: All right.

LETTER WALSH TO SHASKE,
20th DECEMBER, 1965,
MARKED EXHIBIT #48.

Q MR. MCGILLIVRAY: Following that meeting, you came to learn that there was going to be a Board of Directors Meeting within a few days?

A That's right, sir.

Q And there came to be a Board of Directors Meeting, as you learned. There was a Board of Directors Meeting?

A Yes, sir.

Q That was when, on the 22nd of December, was it?

A I was not there, sir.

Q Well, did you not become advised as to what occurred, at least you got a formal notice as to the --

A The decision taken at the meeting?

Q Yes?

A I believe so.

Q And the Directors advised you and Mr. Philipzyk that they had confirmed the recommendations of the

Q (Cont) Ethics Committee?

A That's right.

Q You were informed that Mr. Philipzyk was told to apologize and was ordered to pay a hundred dollars?

A And to consider himself severely reprimanded.

Q And consider himself severely reprimanded.

And, Mr. Philipzyk then said he was -- and they advised him of his right to appeal to the general membership?

A Yes, sir.

Q And, Mr. Philipzyk wrote and said he was going to appeal?

A That's right.

Q And then, the appeal was set for a certain time, and Mr. Kellough was then in the hospital, or something like that, so it was adjourned, that's correct, isn't it?

A I had forgotten about that.

Q And, then, a date of the 3rd of May, I believe was fixed?

A May the 3rd, sir, yes.

Q You were notified of that?

A Yes, sir.

Q And the actual appeal proceeded on the 3rd of May, didn't it?

A Yes, it did, sir.

Q Mr. Philipzyk was not present because, at that time, he was sick?

A Yes, sir.

Q I understood from him, that he had not, didn't want an adjournment. There's no suggestion, is there, Mr. Walsh, that if the Committee would ask for an adjournment because Mr. Philipzyk was ill, he wouldn't have got one?

A No discussion was allowed, so he wouldn't have been able to speak in any event.

Q But if he had asked, if he had wanted an adjournment because he was ill, you don't suggest that you wouldn't have got one?

A No, I can't speculate on that.

Q Now, you, I believe before the meeting, there was some discussion between you and the secretary as to the procedure?

A Yes, sir.

Q And they had originally laid down ten minutes to
of
a representative/Kellough, a representative Philipzyk, and someone on behalf of the Ethics Committee, each of them to have ten minutes, and did you take that up with the secretary and complain this wasn't long enough?

A I believe I did.

Q And they then agreed it would be fifteen minutes?

A Fifteen minutes. And I wrote them a letter suggesting, asking that there be a transcript of the appeal.

Q You suggested that there should be a transcript?

A Yes.

Q Of what was said?

A A tape recording or something of that order.

Q What was the response to that, Mr. Walsh?

A That this would not be allowed. I believe the Directors discussed it and said it would not be allowed.

Q Then, sir, I think they wrote you and said to you, there will be no further evidence on this appeal, it's a case of submissions being made to the members, based on what had occurred?

A That's right, sir.

Q Now, will you just tell the Commissioner what happened on the appeal, where it was held and what were the circumstances and everything about it?

A The appeal was held in the, at the Edmonton Inn, in a large banquet hall. And the official number given as to the attendance was 277 members. And I was advised that there were 58 who voted. Which meant there were 219 who were present and who had no vote.

Q Now, sir, under the Constitution, the salesmen, unless they were voting salesmen, had no vote?

A Precisely.

Q Go ahead, sir. This was a luncheon meeting?

A Yes.

Q And they had their ordinary business, I believe. There was a door prize drawn for, or something like that?

A This is the normal procedure to have luncheon, and this takes probably three-quarters of an hour or so. And then they, I'm not quite sure just how much was said at the head table -- I think they shortened up a little bit in order to get on with the appeal, because it was -- and in my view, it was the only reason I was there.

Q Quite. All right, sir, then finally it came time to deal with the appeal?

A Yes, sir.

Q What was the procedure then?

A I was allowed to speak for fifteen minutes, and in order that the arguments that I had to present would not be subject to any variation, or any misinterpretation, I didn't just deliver them, I read them. And I have the original copy that was read word for word.

Q And this was your submission on behalf of Mr. Philipzyk?

A This is right.

Q As to why he should not be found in breach of the ethics, and fined?

A Yes.

Q Then, who went first, sir?

A I did.

Q Then, who went next?

A I was followed by Norm Murray, representing Mr. Kellough.

Q That was the manager of one of Mr. Kellough's branch offices?

A Yes, sir.

Q Mr. Kellough wasn't there, either?

A No, sir.

Q Is there anything about Mr. Murray's submission that you found unreasonable, or take exception to?

A The considerable attention that was paid to the subject of medical insurance, I thought was quite unwarranted. A very important disclosure was made, that in 1964, when the Board had rejected Mr. Philipzyk's application, I mentioned in my appeal that --

Q What Board?

A The Edmonton Real Estate Board Co-operative Listing Bureau Limited.

Q You say in 1964 they had rejected his application?

A While he was employed with me.

And, in my appeal, I said that this obviously, obviously was based on the credit and character report obtained at the time of his re-application in 1964. Because the information contained there could only have come from a previous employer.

And when Mr. Norm Murray followed me at the appeal, he said Mr. Walsh has referred to this report in 1964, and he said, I want him to know that I am the one who provided the information.

Q Well, Mr. Walsh, if he was replying to something you brought up, that wouldn't be unreasonable, would it, that he should deal with it?

A It was to me an important disclosure.

Q You lost me a little, sir, when you said the Edmonton Real Estate Board Co-operative Listing Bureau Limited wouldn't take Mr. Philipzyk's application in 1964? You mean he did work for you from '64 to '66?

A That's right.

Q You were a member of the Edmonton Real Estate Board

Q (Cont) Co-operative Listing Bureau Limited?

A Correct, sir. But when he came -- do you wish me to talk about this?

Q Well, if we could do it briefly, sir?

A It's rather difficult to do briefly, because Mr. Cavanagh has a file on it here, and there are about four letters.

Q Well, I don't want to get away off into --

THE COMMISSIONER: I think you're getting into irrelevancy. I think what I am here to consider is what happened with Kellough Agency started in '64.

Q MR. MCGILLIVRAY: Anyway, sir, we had you speak. We have had Mr. Murray speak, and then we had somebody from the Ethics Committee --

A Representing the Board of Directors, sir, who was Mr. Norm Winterburn, who also had been Chairman of the Ethics Committee, and who represented his recommendation to the Board of Directors.

Q Is there something about what he said that you regard as unfair or improper to Mr. Philipzyk?

A He advised the meeting that they were in possession of a statement signed by Mrs. Magda Hansen, and sworn before a Commissioner of Oaths, that the statements which had been signed by Joe Olthius and Mrs. Hansen was correct in every detail, or

A (Cont) something to that order.

Q Now, up to this point, you had been complaining that you couldn't ask Mrs. Hansen if this was her signature?

A In my appeal, I said that according to Article 141 of the By-laws, that every member complained of had the right to interrogate every witness. And this had not been done.

Q And in that, they produced an affidavit by her, simply saying that this was her signature, and that statement did, in fact, reflect her feelings?

A They didn't present the affidavit, sir. He told us that. He did, Mr. Winterburn told us that.

Q Mr. Winterburn?

A Yes, sir.

Q Told you that they now had such an affidavit?

A Told the meeting.

Q Told the meeting that they had an affidavit from Mrs. Hansen?

A That's right, sir.

Q Confirming that what she said in this statement that had been put before the Board was true?

A And had been sworn to before a Commissioner for Oaths.

Q Anything else said by whoever was speaking for the

Q (Cont) Ethics or the Board of Directors?

A Well, Mr. Winterburn referred to, said we know that Mr. Philipzyk has written to the Director of Co-operative activities, and that Mr. Walsh has written to the Attorney General, as if this were something that we should not have had the right to do.

Q Anything else occur at that meeting, sir? I mean, there was a vote, and the vote, I think, was unfavourable to Mr. Philipzyk?

A Mr. Anderson went up and complained to Mr. -- I had mentioned it in my appeal that there should be discussion on this matter, and it was on order, under the by-laws, for any member to move for discussion, and Mr. Anderson, before the vote, went up and asked Mr. Shaske, and was told to sit down.

Q Mr. Anderson is an agent?

A Yes, sir.

Q And a member of the Board, as far as you know?

A A voting member, yes, sir.

Q Now, sir, following the meeting, Mr. Philipzyk was told again that he should pay the hundred dollars and issue his letter of apology?

A Yes, sir.

Q And that, when that wasn't done, a letter of the 3rd of June, 1966, was sent to you?

A That's right.

Q Have you that letter, sir?

A I didn't bring the original, sir. I have a Xerox copy of it.

THE COMMISSIONER:

That will do.

A You require the letter, do you?

Q MR. MCGILLIVRAY: Well, perhaps we could use a copy here.

A That's the letter dated May the 12th.

Q No, sir, June the 3rd?

A Oh, yes, sir.

I just have the letter sent to me.

Q Yes, that's all I'm dealing with?

A Yes, sir.

Q This is the letter you received, the original of that letter, in due course, I suppose?

A Yes, sir.

Q This letter, sir, is dated June the 3rd, 1966. It's sent by double registered mail to Mr. Walsh. It's re Mr. R. J. Philipzyk:

"Dear Mr. Walsh:

Enclosed please find a copy of a letter which has been sent to your

Q (Cont)

"Salesman, Mr. R.J. Philipzyk, under today's date. You will note from this letter that the Directors, at a regularly called meeting held on June 1st, 1966 voted to expel Mr. Philipzyk from membership in the Edmonton Real Estate Board Co-operative Listing Bureau Limited.

I am enclosing Form No. 2 for completion by Agents who are reporting a termination of employment which the Directors ask that you now complete and forward to this office by return mail together with a copy of your letter to the Commissioner of Real Estate advising them of the termination of Mr. R. J. Philipzyk's employment as a Real Estate Salesman with your firm."

You acknowledge that letter, sir, by your letter of the 6th of June, 1966, which I show you?

A Yes, sir.

Q Perhaps, sir, I should mark first the letter of the third of June?

COPY LETTER HAUGEN TO WALSH
3 JUNE 1966, MARKED EXHIBIT #49.

Q MR. MCGILLIVRAY: And the letter of the 6th of June, Mr. Walsh's reply:

"Dear Mr. Haugen,

Your double registered letter of June 3rd was received this morning. I enclose herewith copy of termination of employment notice also copy of my letter to the Commissioner of Real Estate returning the licence of Mr. Philipzyk for cancellation as ordered by the Board."

With that is a copy of your letter to the Commissioner of Real Estate, stationing that:

"I enclose herewith a copy of letter received this morning from the Edmonton Real Estate Board Co-operative Listing Bureau Limited, ordering me to terminate the employment of the above named Robert J. Philipzyk and return his licence to your office for cancellation.

In accordance with the above mentioned order I return herewith the licence No. S-10510 dated November 20th, 1964, for cancellation.

Sincerely yours,

Burton Real Estate.

U.P. Walsh, Agent."

Q (Cont) May that be marked, sir?

LETTER OF JUNE 6 1966 TO
MR. HAUGEN AND COPY OF LETTER
TO THE COMMISSIONER OF REAL
ESTATE, MARKED EXHIBIT #50.

Q MR. MCGILLIVRAY: Now, Mr. Walsh, is there anything else that you wish to tell the Commissioner about the proceedings, any of them, or about the Edmonton Real Estate Board Co-operative Listing Bureau Limited, generally, that you haven't covered?

A You mean generally?

Q Yes, sir?

A This would be my final appearance?

Q Yes, sir. Subject to my friend's asking you specific questions?

A I have a considerable amount to say, sir, regarding the by-laws.

Q Mr. Walsh, sir, advised me that he wished to give you his views or information relating to these by-laws, and how they work in practice. And this is the subject matter of this Inquiry. I said he would be called on that in addition to the specific evidence he could give in relation to the Philipzyk case.

My submission would be now,

Q (Cont) Mr. Walsh is prepared to tell you --

THE COMMISSIONER: Well, I'm going to leave it in your hands, if you think it's relevant.

MR. MCGILLIVRAY: If you would just go ahead, Mr. Walsh, and tell the Commissioner what criticism you have of these by-laws?

THE COMMISSIONER: I, of course, have to deal with the by-laws as they are, whether they are good or bad.

A The part that I was referring to specifically, sir, was the parts where, from one to four of the Public Notice. And I have prepared a considerable amount of information here, dealing specifically with certain items which are probably not familiar to the Ombudsman, respecting the operation of these by-laws. And referring at the beginning specifically --

THE COMMISSIONER: That's not in the purview of the reference to me, to review or revise the by-laws.

A Well, I thought this Inquiry was to show whether the by-laws should stand in their present form.

MR. MCGILLIVRAY: Yes, sir. Perhaps, may I see the Order in Council, Exhibit 1?

THE COMMISSIONER: They may not be desirable by-laws, that task is not imposed on me, surely.

MR. MCGILLIVRAY:

That's right, sir.

I think Mr. Walsh is saying, that what he wanted to deal with was the first four items that were a subject of Inquiry:

"Whether the Edmonton Real Estate Board Co-operative Listing Bureau Limited was properly incorporated as a co-operative association;

Whether the Government of Alberta through any of its officers concerned ought not to have approved of the supplemental by-laws of the Edmonton Real Estate Board Co-operative Listing Bureau Limited;

Whether the Edmonton Real Estate Board Co-operative Listing Bureau Limited should be permitted to retain its supplemental by-laws in their present form;

Whether any changes should be made in the Co-operative Associations Act or the procedures followed by the Department of Industry and Tourism in administering this Act;"

THE COMMISSIONER:

I suppose, probably, that opens the door.

MR. MCGILLIVRAY: And in respect to those matters which Mr. Walsh feels that he can --

THE COMMISSIONER: Very well, Mr. Walsh.

A Well, first of all, I would like to refer to the Edmonton Real Estate Board Co-operative Listing Bureau Limited from 1952 to July 1st, 1959. At that time, each member firm had one vote in a general meeting, and only one person was allowed to vote at any general meeting.

Q MR. MCGILLIVRAY: Now, this was the company under the Society's Act?

A No, sir. This was the ^{Estate} Edmonton Real/Board Co-operative Listing Bureau Limited, with its first supplemental by-laws.

Q And this was also just a company of agents?

A That's correct, sir.

THE COMMISSIONER: As I understand it, this incorporated started with standard by-laws, and then there were final supplementary by-laws of 1957.

A 1959, sir.

THE COMMISSIONER: 1959.

Q MR. MCGILLIVRAY: But the company, as originally incorporated, was a company strictly of agents, no salesmen in it?

A This is correct. Until July the 1st, 1969.

A (Cont) And the power of the Board of Directors at that time was subordinate to the members gathered at the general meeting on all matters. Anytime there was a general meeting, the agents voted, the Board of Directors was subordinate to them.

There was only one clause in there that required that each member must be a member in good standing with the Edmonton Real Estate Board, which was an association at that time. But this requirement was removed at a general meeting in July, 1957, on a vote of 34 companies to 10, which was the result of a controversy when the Board of Directors of the Edmonton Real Estate Board presented a proposed new constitution and by-laws for amalgamation. So that, from --

THE COMMISSIONER: Now, when you use the word Edmonton Real Estate Board, we are talking about multiple listing?

A In the second case here --

THE COMMISSIONER: It's in both names, but that's what you mean? You are not talking about institution under the Societies Act?

A I am referring to the co-operative, sir, and the society. But until 1957 there was a clause in the co-operative which required membership, that each

A (Cont) member must be a member in good standing in the society. This requirement, and this is a question I raised, sir, is it possible, under the supplemental by-laws of a co-operative, to have in there a condition requiring the membership in some other association, and have this properly registered, when the by-laws of a second association are not registered.

In any event, that was removed, but I would like to come back to this later on. But, during the first seven years, the co-operative provided excellent service to the member firms. They made a small monthly charge for each set of bulletins and listings in excess of three, and from the percentage of commissions received, operated sufficiently well to gain a substantial reserve. I believe, in the first seven years, their reserve was over a hundred thousand dollars.

The co-operative did not interfere, in any way, with the firms operation of their business, and the four or five general meetings each year allowed the agents to become better acquainted and more important, to discuss real estate practices as between agents.

MR. MCGILLIVRAY: And the co-operative, at that time, had no powers to discipline?

A Yes.

MR. MCGILLIVRAY: For the salesmen?

A Not over the salesmen, sir.

MR. MCGILLIVRAY: And they didn't send the auditor around to see if trust monies were intact or anything like that?

A Well, this comes under the -- this is already, well, this comes under the -- this is already taken care of through the real estate licensing, Real Estate Agents Licensing Act, sir.

THE COMMISSIONER: Let me interrupt. Your brief is fairly extensive?

A Yes, sir.

THE COMMISSIONER: It's going to take a little time?

A Yes, sir.

THE COMMISSIONER: We'll have the usual break.

HEARING ADJOURNS.

HEARING RESUMES.

THE COMMISSIONER: Go ahead, sir.

A In a consideration of the alternative recommendation which is --

THE COMMISSIONER: Mr. Walsh, would you mind turning

THE COMMISSIONER: (Cont) a little my way?

A I'm sorry, sir.

THE COMMISSIONER: Go ahead.

A In a consideration of the alternative recommendations which this Royal Commission might make, it is my hope it will find that the existing by-laws should not have been approved, and that the co-operative should revert to by-laws which existed just prior to July the 1st, 1969.

Q MR. MCGILLIVRAY: Now, that is your hope, that the Commissioner will find that this company does not have salesmen as members, and are a company of agents alone?

A And furthermore, that the powers which are vested in the Board of Directors should revert, again, to the agent members, as they were prior to July the 1st, 1959.

Under the existing by-laws, the directors have used articles 57, 58, 81 and 91, to take complete and absolute control of the co-operative, without being required to, or even allowing any direction from the members gathered in general meetings, with respect to the business of the Board and the real estate practices of the members.

A (Cont) Five hundred salesmen and women employees were required, as a condition of employment, to become members of the association, in which they have a combined total of ten votes, as against 120 votes by their employers. They are forced to accept any discipline imposed, including suspension or expulsion, and sign a waiver releasing the Board from any legal actions with respect to these things which may be done to them.

THE COMMISSIONER: You are reading from a manuscript that can be put in as an exhibit?

A You can have this, sir.

THE COMMISSIONER: Yes.

A Parts of it I haven't read here, because I realize -- parts of it I haven't read here because you might consider it -- I want to read those parts which are most important.

THE COMMISSIONER: Yes, okay.

Q MR. MCGILLIVRAY: But you will be in a position to file that with the --

A I will leave this with you, sir.

Q Thank you, Mr. Walsh.

A The five hundred men and women salesmen employees are also required, as a condition of employment, to belong to, and pay dues to, the Alberta Real

A (Cont) Estate Association and the Canadian Association of Real Estate Boards. This means that they would have to take time off work and pay their expenses for travel, hotel, meals, etcetera, to the point of the meeting, in order to register a vote.

I am confident that you will readily come to the conclusion that salesmen should be removed from these by-laws. My mission is also to try and convince you that agents also should be removed. Because, although it would appear that 120 agent employers might have some force with their 120 votes, this is completely nullified, because the directors, by using Articles 57 and 58 and 91 of the by-laws, leave nothing to be decided or discussed at the general meeting.

Q Just what, briefly, sir, are those articles you say they use? Can you not just tell us in a word, sir?

A Yes. Article 57 is that the government and administration --

Q It says government of the co-operative is vested in the directors?

A Vested in the directors. And Article 58 further reinforces that, to the exclusion of the agents.

A (Cont) And Article 91 gives them complete power over the finances. And Article 81 states only that the Board of Directors is required, or should report to the members matters of interest concerning the real estate business. Not concerning the business of the Board. And this is a --

Q Mr. Walsh, in any company, isn't it almost universal that the management and operation of the company is vested in the Board of Directors, and the shareholders' rights, or the members' rights, are to show disapproval by electing a different board?

A I have a different view, sir. I believe that when there is a general meeting, the power of the general meeting should be supreme. And we have about ten general meetings in a year. A few months ago, I advised the President that I thought I should raise the question of the Ombudsman's investigation for discussion at the next general meeting. The President advised me to write a letter to him, which he would present to the Directors, and they would decide whether I could be put on the agenda. Alternately, I asked him to appear before the Directors, which he thought could be arranged. That was a pleasure which I

A (Cont) decided to forego.

There have been two general meetings since the government announced that a public inquiry was to be held. At the mid-April meeting the President made a short statement, that the inquiry was to be called, that the Directors were convinced that they had acted properly, and that they were confident the inquiry would prove this to be so.

And at the mid-May meeting, there is no mention of the inquiry.

Now, in his testimony, Mr. McKenzie, the Solicitor for the Board, said, salesmen have the same right as agents on everything except election of agent directors, amendments to the by-laws, and matters of finance.

Q And it was added on, voting on appeals?

A Yes.

Q Yes?

A I believe the executive secretary of the co-operative should be asked to refer to the minutes of the meetings for the last several years, and tell the Commission how many times the salesmen have voted on anything. Because that will be the same answer as to the number of times that the

A (Cont) agents have voted on anything, except those letters.

The Directors recently made a decision, without any vote by the membership, to subscribe to Real-Com, a computerized service emanating out of Detroit, Michigan. This of course, meant that all the listings taken from the multiple listing service in Edmonton would be on file in a computer in Detroit. This is a highly controversial subject.

It is possible that this decision was made by four Directors out of the quorum of seven.

Under by-law 57 these decisions are vested in the Directors. That word vested places the government and the administration of the co-op under the irrevocable control of the Directors. The decision to subscribe to Real-Com was reversed when the firm was unable to perform for financial reasons.

Q Mr. Walsh, just again on that subject, do you suggest that the seven hundred odd salesmen, and the 120 odd agents, should determine whether it was good business to have a computer in Detroit handling these listings? I mean, do you think you

Q (Cont) would get a sensible business decision at a meeting by a group like that?

A No.

THE COMMISSIONER:

Let Mr. Walsh go on.

A No, I don't believe so, sir.

MR. MCGILLIVRAY:

All right, sir.

A But at an interview with you two weeks ago, you asked why we didn't have agents' meetings. Now, the last agents' meeting that was called was on Monday, November the 13th, 1967. The Directors called a meeting of agents. And that, to my knowledge, is the last one. And, at this meeting, we were told that the meeting had no status, but that any suggestions which might come from the meeting will be considered by the Directors.

Now, this sounds to me like it's backwards. I have always understood that the Directors do what they are instructed to do by a general meeting. And this right has been specifically removed from the by-laws and the result has been to muzzle both agents and salesmen at a general meeting, and place outside the jurisdiction any matter, other than election of directors and amendments to by-laws and so on.

A (Cont) And this is usually just a vote, and no discussion.

And this has resulted in a climate of fear of the power, because of the power of the Directors. Many agents now do not wish to get involved in meetings or discussions.

And because the by-laws are officially sanctioned by the department government, they have the effect of law.

Agents and salesmen are licensed and tested by the office of superintendent of insurance and real estate, and they are subject to the regulations of the Real Estate Agents Licensing Act, many of which are duplicated in the by-laws of the co-operative.

The original incorporation of the co-operative was to provide a mutual business service to the real estate agents of Edmonton, and not to set up another disciplinary branch of the government.

It would be impossible to return the co-operative properly to the control of the agent members, without first rejecting the existing by-laws in their entirety. This could be done by declaring them improperly

A (Cont) constituted, and ordering the co-operative to return to the by-laws which existed just prior to July the 1st, 1959. This would then require a meeting of agents to elect an interim Board of Directors, and subsequently conduct a proper election under the original by-laws.

It is hoped the power of policing will be firmly placed in the hands of the superintendent of insurance and real estate, and it's my belief that complaints from the public should be heard by the government department, and not by any private Board of Directors, as is being done now.

Before there was any legislation, provincial legislation, the terms ethical and unethical were defined by real estate boards. Subsequently, the provincial government defined some of the rules governing real estate practice for the protection of the public. But my understanding is the last comprehensive act in Alberta was in 1947.

If there is need for greater discipline, then they should be up here. Certainly there should not be two branches of government covering the same area, one issuing the license and

A (Cont) the other taking it away.

Any Real Estate Board having a complaint about the conduct of another agent or salesman, regarding a real estate transaction, should be obliged to make it in writing to the superintendent of insurance and real estate, because the public is involved.

And on certificates of solvency and audits, this is the responsibility of insurance and real estate, and there should be no interference with this responsibility. Especially since the 1968 amendments to the Licensing Act, which requires an audit of trust account once a year.

I believe the ultimate control of the co-operative should be of the general meeting, and that the Directors should be subordinate to any decision made at the general meeting. Because all our by-laws have reversed this procedure does not make the procedure right. It just makes the by-laws wrong.

We often read of the steam roller tactics in Board of Directors and officers of large corporations at general meetings. Usually these cases involve the majority stockholders

A (Cont) representatives, imposing their policies over minority stockholders who are making a lot of noise. In this co-operative, we don't have majority stockholders, and the Directors should act in good faith for all the members.

The by-laws should make this clear, without the necessity for any member to sign a waiver or release. At the present time, general meetings of the co-operative are ^{over}/crowded with salesmen. With a turnover of over thirty per cent per year, most of these are strangers to each other. Agents do not have an opportunity to meet. I know fewer agents now than I did fifteen years ago, when there were half as many.

As a result, agents cannot amount any effective opposition to the Directors, nor even to present an alternate slate for election as Directors.

By-law 81 shows deliberate intent to keep the members uninformed of what the Directors are doing. It reads:

"The Directors shall keep the members reasonably and properly informed of all matters of concern to the membership in respect of the real estate business."

A

(Cont)

One of the various questions which had been discussed by the agents at a co-operative general meeting, prior to the change of the existing by-laws, was the propriety or otherwise of the co-operative allowing , to full membership, direct mortgage lenders. Some of the considerations were that real estate was not their principal business. That when they secured a listing, they were acting for the vendor. They attracted a purchaser because they had mortgage money, and they placed the mortgage, using money which was in their trust, to facilitate a deal on which they made a commission. It was to these same mortgage lenders that a full time realtor had to apply to get a mortgage for a purchaser, which could lead to losing a good investment buyer's future business.

But since the existing by-laws came into effect, this question has not been raised again, because no serious questions can be asked at the general meeting.

At the present time, there is considerable dissatisfaction of some of the rules laid down by the Directors, which permit the listing broker to put such restrictions on the

A (Cont) presentation of offers from other brokers that it could be considered questionable whether the service has merited the seven per cent commission charged. If a member is listed on a multiple listing, by a broker, it now usually bears an instruction, all offers through listing broker. This is a practice which became general only a few years ago, and often the vendor is not even aware that this is a restriction. Because he does not know it is on the listing.

If the listing broker makes a sale, he gets 6.8 per cent. But if another broker sells it, the listing broker only gets 2.8 per cent.

The practice of many listing brokers is to ask other brokers to bring their offers to the office of the listing brokers for presentation to the vendor by him. And this practice has been upheld by the Directors, and often the next word is that the offer was not accepted. And then it's discovered a few days later, from the bulletin, that the property was sold by the listing broker for a slightly higher price. Obviously, the first offer had been used to trigger the second, without the first offer having had the

A (Cont) opportunity to look at a counter offer.

The practice of using in using the office of the listing broker is favoured by those companies which have several offices, higher advertising budgets, and lower commission rates per salesmen. Implicit in this instruction is a suggestion that only the listing broker will safeguard the interest of the vendor. Despite the fact that the property is automatically listed, with all the members of the co-operative supposedly on an equal basis. On the other hand, the co-operative, in a daily radio advertisement on a local radio station at 8 A.M., proclaims to the public that all 800 representatives have had to take a prescribed course of study and write qualifying examinations, and are fully competent in all phases of real estate. And I have here a letter showing that some members question -- this is from the Board, showing that some members question this practice. It actually was not common until 1965. It was used only in very rare cases, up until that time.

And there is another notice that went out on May the 7th, 1970, with, urging listing brokers to present offers. Often there is

A (Cont) nobody available to present the offer, so the selling broker can't tell his purchaser that he's got, that he can even present the offer. And he is prohibited, under the by-laws, from going directly to the vendor. And this is a very serious restriction, and I think it deserves the study, not just of the Board of Directors, with possibly four people out of the seven making a decision, but all of the agent members.

Q MR. MCGILLIVRAY: These complaints relate to practice?

A Which we don't have an opportunity to discuss, sir.

Now, there is another practice under which the salesmen are forced to sign the waiver, sometimes within the first month or two. The present practice is that a salesman, who is not eligible to join the co-operative until six months, must take the first available course. And the present practice is that a salesman, registering for the first available course, is obliged to send in \$25 for the course, and in addition \$25 membership fee, together with an application for membership. Which includes the waiver of his rights to take legal action. And this he signs

A (Cont) four months or more before he is eligible for membership.

Another practice which should be distasteful to salesmen, is that a credit and character report is obtained for new salesmen, and for salesmen transferred from one agency to another. In the case of a transfer, the previous employer agent is able to make accusations and condemn his fellow member without disclosing where the information originated. And this is a practice they don't have in Calgary.

Now, Article 214 of the by-laws reads as follows:

"The Board shall be a member of the Canadian Association of Real Estate Boards and of the Alberta Real Estate Association. By virtue of such membership all of its members shall also be members of these associations."

I don't see where this, that this gives the co-operative the right to charge all the voting and non-voting agent members annual dues to these annual associations as a condition of membership. However, as they are charged for membership, I believe this brings the activities of these two bodies under the review of this inquiry.

A (Cont) And I wish to, I have attached here a letter from the Board, showing that the dues are actually charged to the members.

Q Is it dues to belong to the Canadian --

A The Alberta Association, Real Estate Association. And a notice that they intended to make this possible to increase those dues.

Q What are the dues now, for the salesmen?

A Ten dollars a year to the, or, perhaps more now, to the Alberta Real Estate Association. And five dollars a year to the annual, to the Canadian Association of Real Estate Boards. But this is not the point, sir. The point is, if you belong to the Association, you should be able to have an opportunity to cast a vote. And in order to cast a vote, if you went to the last meeting, which is once a year, costs you fifteen dollars just for one person to register, plus your hotel, travel expenses, and so forth; if you were going to take your wife, if you are an agent, it costs you thirty-five dollars.

But one of the points I would like to make here, is, I don't think it was ever the intention of the government to make the members of the co-operative conform to the by-laws of some

A (Cont.) other association as a condition of membership in the co-operative. And this association, or this co-operative, has in their by-laws, if you can interpret this the way they carry it out, that every member must be subject to the by-laws of the Alberta Real Estate Association and the Canadian Association of Real Estate Boards by virtue of their membership in this association.

This has assumed the proportions of a national channel of authority. We have a Canadian Association of Real Estate Boards, and earlier this year, in attacking the Benson white paper, the President of the CAREB stated he spoke for 27,000 members.

I have here a copy of the officer service catalogue and reference, which is intended to be a standard reference for the organization and operation of real estate boards. And this is a 1963 issue. At that time, there were 12,000 members paying dues to the National Association. Now there are 27,000.

On page 25, it says, it is now the parent body of organized real estate in Canada. On page 18, it says, compulsory salesmen membership is recommended. It doesn't say how

A (Cont) you get them to vote, or whether they are allowed to vote. On page 4 it says, it cannot be emphasized too strongly that MLS activity must be handled by a committee and never be a separate division of the Board. This is Board business, it must be controlled and operated by the Directors. It is dangerous practice to handle this in any manner other than by a committee which is subject to the Board of Directors on all matters.

But one of the things that I do here most strongly, is they enjoin the President to have a firm control over his Board. And most of all, to keep them busy. Sponsor a realtor blood bank, give Christmas parties for orphans, hold series of conferences with newspaper editors, hold citizens and general legislators as guests, send congratulations to people whose achievements appear -- and so on. Hold essay contests, award real estate scholarships, supply cars and drivers, hold annual anniversary banquets, hold annual picnic or outings, hold an annual fishing party, hold an annual golf tournament, maintain a black list. And then, after they have gone through all this, they say, on page 22, everything which is set out in this manual should be considered

A (Cont) in the light of the end result being a contribution to the business of creating a public image.

Now, I am quite sure that our local realtors, for whom this co-operative was set up, don't wish to come under the guidance of these Madison Avenue fellows. I, for one, don't. And further, I don't think that it is right, that it should be compulsory, in our co-operative, or that it was ever intended to be. To force members to belong to and pay dues to two other associations, whose by-laws, and subject, be subject to those by-laws, when those by-laws are not registered in the province, with the provincial government.

That's it, sir.

THE COMMISSIONER:

Somebody may want to ask you some questions.

A Yes. That better go in as an exhibit.

SUBMISSION OF WALSH TO
COMMISSIONER, MARKED
EXHIBIT #51.

MR. CAVANAGH EXAMINES THE WITNESS:

Q Mr. Walsh, in 1964, Mr. Philipzyk was discharged by the Kellough Realtor, and he came to you for a job, did he?

A Yes, sir.

Q Prior to hiring him, I suppose you checked with the Edmonton Real Estate Board Co-operative Listing Bureau Limited to see if his record was all right?

A No, I had known him for some time.

Q Yes, but did you check that he was in good standing and so on?

A He showed me a letter that he had from Mr. Haugen, dated in May, that he was in good standing and could return to work for some other company.

Q I see. So, then you hired him. When did he go to work for you?

A Just after he got his bond and license, I believe. Or his bond was in effect, I'm sorry. His license, which was a day or so later.

Q Have you a record which shows when he started working for you?

A No, I don't have it here, sir, but I would say around the 7th or 8th of July, 1964.

Q I am showing you a letter dated June the 11th, 1964, from Mr. Haugen to Mr. Philipzyk. Is this the letter that you refer to as having been shown to by Mr. Philipzyk?

A Yes, sir.

Q That is the letter written to Mr. Philipzyk while he was in Vancouver?

A Yes, sir. Directed to him as Mr. R.J. Phillips.

Q Might that be entered as an exhibit, Commissioner?

THE COMMISSIONER: Do you want to read it?

MR. CAVANAGH: "June 11th, 1964.

Mr. R. J. Phillips,
1005 Lillooet Street,
VANCOUVER, B.C.

Dear Bob:

I have your letter of May 27th which did not reach this office until last week. I am very sorry indeed to hear that you have been ill and hope that your health improves.

Regarding your Real Estate Salesman's license in Alberta, we have been advised by H. R. Kellough Realty Ltd., that this has been sent in to the Provincial Government for cancellation so you need not hurry back on that score. We have, of course,

MR. CAVANAGH: (Cont)

"therefore taken you off our Membership Roster but if and when you come to Edmonton and join another Firm it is a very simple matter to re-apply.

This would appear to answer the queries raised in your letter.

Best of luck.

Very truly yours,

C. Kelly Haugen
Executive Secretary."

Could I put that in as an exhibit?

LETTER HAUGEN TO PHILLIPS
11 JUNE 64, MARKED EXHIBIT #52.

Q MR. CAVANAGH: Then, was his employment with you in 1964 normal, or were there some problems?

A Well, the first problem arose, sir, when we received a notice that his, from the Department of Insurance, Real Estate and Insurance, that his bond was being cancelled. Two months notice, I believe of cancellation of his bond. I think that was in September.

Q Yes. Did you do anything about that?

A We had him apply, through Mr. Robertson, of Robertson Knox Insurance Services, who made application

A (Cont) to the Canadian Surety, and after several days, I phoned Mr. Robertson and asked him if he heard anything, and he said no, but he would. And he phoned me back and advised me that he, the Surety Company would not issue the bond until he had paid Mr. Kellough some of the money that he had owed him.

Q Now, I'd like to get the chronological order of this; I believe he was notified by letter of September 17th, 1964, that his bond was being cancelled. Is that the letter that was brought to you from the --

A Yes, sir.

Q -- Real Estate Branch?

A Yes. That it would be terminated on November the 16th.

Q Well, now, I think that's already in as an exhibit, one of the copies, isn't it, of that letter?

This is a letter dated September 17th, 1964, to Mr. Robert J. Philipzyk, Leland Hotel, Edmonton, with a copy to Burton Real Estate, 8908 - 99 Street, Edmonton:

"On Bond No. 883331 we received from the Surety Company two months notice of intention to cancel the captioned bond."

Q (Cont) The typing is in the middle of the printing, Robert J. Philipzyk is in there, too.

"September 16th, 1964.

You are therefore advised that unless the bond is reinstated or a replacement bond filed your real estate licence will be terminated on November 16th, 1964.

Yours truly,

J.A. MacPhee

Commissioner of Real Estate,

H. G. Nicol

Licensing Officer."

Might that be put in as an exhibit?

LETTER MacPHEE'S OFFICE TO
PHILIPZYK 17 SEPTEMBER 64,
MARKED EXHIBIT #53.

Q MR. CAVANAGH: Now, Mr. Walsh prior to that notice of cancellation of bond, had there been some difficulty with the Edmonton Real Estate Board Co-operative Listing Bureau Limited concerning Mr. Philipzyk's licence?

A Yes. We received the letter that the membership, the Board of Directors, his membership was being

A (Cont) considered by the Directors, and that it had been deferred pending receipt of a character and credit report.

Q This was a letter dated when?

A September the 10th, 1964.

Q From?

A Mr. Kelly Haugen, to me.

Q This letter marked:

"Personal & Confidential

Mr. J. P. Walsh,
Burton Real Estate,
8908 99 Street,
Edmonton, Alberta.

Dear Pat,

RE: Robert J. Philipzyk
(Phillips)

The application of the
above noted to Membership in the Edmonton
Real Estate Board was considered by the
Directors at their last regular meeting.

I am asked to advise you
that consideration of his application has
been deferred pending receipt of a complete
character and credit report.

Yours truly,

C. (Kelly) Haugen
Executive Secretary"

Q (Cont) Might that letter be entered.

LETTER HAUGEN TO WALSH
10 SEPTEMBER 64, MARKED
EXHIBIT #54.

Q MR. CAVANAGH: Now, with regard to Exhibit 54, how did that come about? Is it normal that a salesman, transferring from one to the other, has to be considered by the Board of Directors?

A This is one of my principal complaints, that salesmen transferred from one company to another, the membership committee orders a credit character report on them, which allows the previous employer to express himself without revealing his presence.

Q So that, in the normal practice of the Board, Mr. Kellough would have been contacted concerning Philipzik?

A Someone would probably be required to do that. The reporting company would invariably ask the previous employer.

Q It was in this area, or in this time, that you subsequently learned that Norm Murray, is it Norm Murray --

A I didn't learn, sir, until the appeal in 1965, when he disclosed that he was the one who had given

A (Cont) this information.

Q To the Surety Company?

A No, no.

Q To whom?

A To the reporting company, to the reporting company for the Board.

Q Oh, all right. It was Mr. Murray that gave information in '64, that resulted in these problems for Philipzyk in '64, is it?

A With the Real Estate Board, yes.
After they had asked for a credit report.

Q Well, then, after the Surety Company had notified the Real Estate Branch, did you take the matter up with Mr. Kellough?

A Well, I felt that Mr. Kellough, being the insurance agent, had some responsibility toward his client, to ask him if, before he cancelled his licence, whether he wished to renew. This seems to be general practice with insurance agents, and I think that Mr. Kellough was running an insurance business along with his real estate business.

Q I am showing you a copy of a letter dated September the 30th, 1964, addressed to Mr. Homer Kellough; is that a letter sent by you?

A Yes, sir.

Q Have you reason to believe that Mr. Kellough received the original?

A Yes, because he phoned me about it.

Q Letter dated:

"September 30th (19th) 1964.

Personal

Mr. Homer R. Kellough,
President & General Manager,
H. R. Kellough Real Estate Ltd.,
Grd. Flr. McLeod Bldg.,
Edmonton, Alta.

Dear Homer.

I am writing to you regarding a man who has been an insurance client of yours for about the past four years with respect to his surety bond. He is Robert J. Philipzyk, Canadian Surety Company Bond No. 883331, a salesman with our firm. We have received a letter from the offices of the Commissioner of Real Estate that they have notice of intention to cancel the bond. We have ascertained that the Surety Company has no other reason to cancel the bond except that you have advised them that he is encumbered with your company with

Q (Cont)

"respect to his previous employment with your real estate practise. When I discussed this with Bob he was considering taking the matter up with the Commissioner of Real Estate and a Solicitor. I phoned Kelly Haugen and it was agreed that the proper first step would be to put the matter before you to ascertain what the problem is and what steps can be taken to insure that Bob's livelihood will not be endangered.

I would also like to ask your advice about another of our salesmen, Bill Pruden, who states that he has coming to him from Trotter, McIntyre and Kellough Limited deferred commissions of about \$635.00. He says that in over three years he has not received any money on this nor has he received a statement of account. Bill tells me that last year he and Dave Krupa called on the accountant who is handling the account and were informed that the bank would soon be paid off but that they could not expect to receive any money until all the money had been collected from those other salesmen

Q (Cont)

"who owed money to the company.

It is to hoped that these matters can be settled amicably without the necessity of getting solicitors involved.

Yours very sincerely,"

Might that be entered as an exhibit?

COPY LETTER WALSH TO
KELLOUGH 19 SEPTEMBER '64,
MARKED EXHIBIT #55.

Q MR. CAVANAGH: So then, Mr. Kellough phoned you in answer to that letter?

A Yes, sir.

Q In there is an assertion by you that he had informed the Surety Company that Philipzyk was indebted to him, and this is the reason for the cancellation of the bond; now, did he admit that?

A I didn't say that in the letter, sir. I said that we had been advised -- I didn't say that he had notified them. I said that the Surety Company or, we had received word that the Surety Company --

Q Mr. Walsh, I think we had better be fair and refer exactly to the words of the letter: "We have

Q (Cont) ascertained that the Surety Company has no other reason to cancel the bond except that you have advised them that he is encumbered with your company with respect to his previous employment with your Real Estate Department."

Now, did he speak about that at all?

A Yes, he did. He said, Pat, you know I have nothing to do with issuing bonds. And so, then I discussed with him the fact that he, that it was normal that people in insurance would ask their clients if they wished to renew and --

Q Well, then is it rather inconclusive as to whether Homer Kellough told the Surety Company that Philipzyk was indebted to him? Is it conclusive or inconclusive that he did that?

A Well, I have no way of knowing except, because all I have is the word of Mr. Robertson that the Surety Company wouldn't do it because they had been advised by -- might have been someone else in the same firm, but I would think that they would go to the head office.

Q All right. Now, there's two reasons now why his licence is in jeopardy, whether Philipzyk's licence is in jeopardy at this stage; one is the Surety

Q (Cont) Company's activities; and the other is the Edmonton Real Estate Board Co-operative Listing Bureau Limited Board of Directors?

A That's right, sir.

Q Now, what happened on that, on the Board of Directors?

A I received a letter that his application had been rejected, and I believe they said that I could ask for an appeal, or else I asked for an appeal. Which, the opportunity was granted.

Q I show you a copy of letter dated November the 24th, 1964, to the President of the Board of Directors, Edmonton Real Estate Board Co-operative Listing.

A Yes, sir.

Q You sent it on Mr. Philipzyk's behalf?

A Yes, sir.

MR. MCGILLIVRAY: Perhaps we should have the original of that if you have it.

MR. CAVANAGH: The letter from the Board was --

A Stating the application had been rejected.

Q MR. CAVANAGH: Yes, I'm getting out of order. Show you, firstly, a letter of November 16th, 1964, from the Board.

A Yes, sir.

Q

This letter:

"Mr. J. P. Walsh,
Burton Real Estate,
8908 - 99th Street,
EDMONTON, Alberta.

Re: Membership Application -
Robert J. Philipzyk (Phillips)

Dear Pat:

I am instructed by the Directors of the Edmonton Real Estate Board to advise you that the application by Mr. Philipzyk to Salesman Membership in the Edmonton Real Estate Board has now been rejected.

Under Article 36 sub (a) and (b) on page 16 of our Constitution and By-laws you will note that his employment with your firm should be terminated not later than 30 days from the date of this notice.

On one or two occasions in the past, when Agents felt strongly about the rejection of Salesmen's applications, the Agent himself has requested permission to appear before the Directors to make personal representations why the decision should be reconsidered. I have no reason to think that

Q (Cont)

"a request such as this from yourself would not be entertained by the Directors.

Very truly yours,

C. Kelly Haugen
Executive Secretary."

Might that be entered as an exhibit?

LETTER HAUGEN TO WALSH
DATED 16 NOVEMBER 1964,
MARKED EXHIBIT #56.

THE COMMISSIONER:

Well, I guess we'll adjourn

until 2 o'clock.

HEARING IS ADJOURNED.

HEARING IS RESUMED JUNE 26th, 1970 AT 2 P.M.

MR. MCGILLIVRAY: Mr. Commissioner, some of the people here are wondering what your intentions about sitting might be, I have suggested that my understanding was you would rise at four and resume at ten o'clock Monday morning.

THE COMMISSIONER: I think so, yes.

MR. CAVANAGH: I think that Mr. Walsh had just placed in a letter from the Edmonton Real Estate Board, membership application regarding Robert J. Philipzyk.

P. J. WALSH, examined by MR. CAVANAGH:

Q You wrote this letter on November 24th, 1964?

A Yes sir.

Q That is a copy of that letter, is this correct?

A That is right.

Q I will read as follows:

"November 24th, 1964.

The President & Board of Directors,
Edmonton Real Estate Board Co-operative
Listing Bureau Ltd.,
10515 Princess Elizabeth Avenue,
Edmonton, Alberta.

Re: Membership Application -
Robert J. Philipzyk - (Phillips)

Q

(Cont)

"Dear Sirs,

I understand from Mr. Haugen's letter of November 16th that I am under notice to terminate the employment of the above mentioned as of December 16th.

While I realize that the decision of the directors was made on the basis of a recommendation from the Membership Committee Chairman, I wish to point out that, in my view, the recommendation was based on an improper interpretation of the constitution, similar to the erroneous interpretation regarding the admission of new agents last year and on which legal opinion was asked. I refer to this only to show that errors can be made in recommendations by committees but that the directors are bound by oath of office to adhere to the constitution.

The situation with Mr. Philipzyk is that he was employed by a member firm for the first five months of this year and was a member in good standing of the Edmonton Real Estate Board. He took a holiday in Vancouver (for his health) and joined our firm in early July.

Q

(Cont)

"I thought it would be just a matter of putting him back on the membership roll, but Mr. Haugen asked me to send in a membership application.

If Mr. Philipzyk is being treated as a new applicant, then under By-law #5 he is not eligible to make application until he has been continuously employed for a period of six months by a voting agent member. This clause precludes the directors from dealing with the application at this time.

If Mr. Philipzyk is being dealt with under By-law #56, then the procedure should be different from that followed in this case. This clause requires that the Board expel by a two-thirds majority vote. The understanding in this case is that he is still a member until he has exhausted his rights under the constitution.

It is perhaps unfortunate that Mr. Philipzyk is in danger of losing his livelihood without being able to seek legal advice at this point and must rely on my amateur efforts on his behalf,

Q

(Cont)

"especially since neither Mr. Philipzyk nor I know exactly what prompted the decision of the membership committee and the Board of Directors.

The only information we have is that a credit report was asked for but we do not know what it contains, nor do we know by whom it was interpreted.

We can only assume that the source of the information contained in the credit report is the same as that provided to the bonding company which led to the termination of his license and employment as of November 16th, 1964. Mr. Philipzyk obtained a new bond and license on November 20th. We believe that this was accomplished only because the Commissioner of Real Estate, Mr. J.A. MacPhee, personally conducted an investigation into the matters which may have been contained in the credit report and supplied to the bonding company.

After you have considered this letter I will appreciate hearing your decision as soon as possible in order that

Q (Cont)

"Mr. Philipzyk and I may appeal under the proper section of the constitution.

Sincerely yours,

Burton Real Estate.

J.P. Walsh."

Might that be entered as Exhibit 57, that is the letter dated November 24th, 1964.

LETTER WALSH TO PRESIDENT
CO-OP 24 NOVEMBER 1964,
MARKED EXHIBIT #57.

Q MR. CAVANAGH: Mr. Walsh, as a result of that letter were you invited to appear before the Board of Directors?

A Yes, I received the letter from --

Q And did you appear?

A Yes, I did.

Q After you had appeared was there a decision that was reached?

A Yes, I was informed by letter that he had been accepted into membership.

Q Was the decision conveyed to you verbally at the meeting, was it conveyed to you?

A Yes, it was.

Q Yes.

I show you a letter dated December 10th, 1964, a letter written to yourself and signed by Kelly Haugen. Was that a letter confirming the decision?

A Yes sir.

Q On the letterhead, it lists the directors on the bottom, were they all present at that meeting?

A I'm sorry, I couldn't say that for sure.

Q You couldn't say that, all right, this letter is dated December 10th, 1964, it was written to J.P. Walsh and signed by Kelly Haugen.

The letter reads as follows:

"December 10th, 1964.

Mr. J.P. Walsh,
Burton Real Estate,
8908 - 99th Street,
Edmonton, Alberta.

Re: Mr. Robert J. Philipzyk
(Phillips)

Dear Pat:

The Directors wish me to confirm in writing that as a result of your appearance before them at their December 9th, 1964 meeting to appeal the rejection of the above noted to Salesman Membership in the

Q

(Cont)

"Edmonton Real Estate Board your appeal has been granted and Mr. Philipzyk has been accepted to membership once again. This acceptance was communicated to you verbally by the Directors and I would ask that you now advise Mr. Philipzyk that this has been confirmed in writing.

We would now ask that membership dues for 1965 for Mr. Philipzyk be forwarded at your convenience.

Yours truly,

C. (Kelly) Haugen

Executive Secretary."

Might that be entered as an exhibit?

LETTER HAUGEN TO WALSH,
10 DECEMBER 1964,
MARKED EXHIBIT #58.

Q

MR. CAVANAGH: As a result of these discussions, Mr. Philipzyk was first suspended by reasons of bond, and he had that straightened out, and then he was suspended by reason of or actions of the Edmonton Real Estate Board Co-operative Listing Bureau Limited --

A No, he was not suspended, sir.

Q Well, it was a notice to suspend --

A The notice of his application was, had been rejected.

Q I see. Well, was he interrupted in his work at that point?

A No, no sir.

Q You got the appeal and you succeeded on the appeal before there was any interruption of his work?

A Yes sir. The bond was the only thing that interrupted his employment.

Q I see. Now, in the fall of 1964, how many months do you suppose that he worked from coming into employment with you, taking into account these interruptions?

A Well, it was quite disturbing and I would say that you might give him credit for half time.

Q Would that be three or four months?

A Well, something in that area.

Q And in that period, I understand, \$1,600 and some dollars?

A That is correct sir.

Q Now, then in 1965 he worked steadily through until, well, he worked all year for you, did he do this without suspension?

A Yes sir, except that he was considerably disturbed prior to the Ethics Hearing.

Q Yes.

A I believe that the record will show that his last cheque was received in August, 1965. He didn't earn anything further until 1966.

Q Oh, I see. Well, what were his total earnings in 1965?

A Well, I believe it is reported as forty-four --

Q Forty-four sixteen ninety-six.

That was for eight months, he didn't do any work after the Ethics Committee was --

A Well, as I say his last cheque was received in August so, approximately --

Q So, he was earning a rate of about \$500 a month?

A Approximately, yes.

Q All right. Now, that Ethics Committee Hearing, you as his employer at that time, took his defence?

A Yes sir.

Q Was there any particular motive why you undertook it?

A Well, there was no one else, sir.

Q I see. Now, in the preparing for that Hearing before the Ethics Committee, first of all, do you know the makeup of the Ethics Committee?

A Yes, I do. There was Mr. Winterburn was the Chairman, Mr. Cummings, Mr. Ed Sande, Mr. Bruce Graham and Al Scott, I believe.

Q Well, there was five in all?

A Yes sir.

Q Of which two were directors, do you know?

A Well, Mr. Winterburn, and --

Q No, I guess --

A -- I wouldn't know, the letterhead of the Board would show --

Q The letterhead, the letterhead wouldn't show, at that time.

All right, now, your information on which to prepare for the defence of Mr. Philipzyk was the two letters by Mr. Kellough, was it?

A Yes, it was.

Q The letter of June 8th, I believe it was and September 7th?

A That is correct, sir.

Q You had no information apart going to the Hearing of the statement by Olthius and Hansen?

A No, that was only presented at the meeting after it had started and the first two letters had been read.

Q Well, in your mind, what was the charge, was it slander or what?

A Well, we knew that he was accused of having said something to two of Mr. Kellough's employees but --

Q Well, all right, now, Mr. Philipzyk had denied this to you?

A That's right.

Q So was the issue, did it in fact happen or didn't it, what were you going there to fight about?

A That's right.

Q These copies of letter sheets that were sent to you, they wouldn't be material to that charge, would they?

A I suppose that, I partly thought that there was an attempt to collect the money, I wasn't quite sure of this until I clarified this with Mr. Kellough. I clarified this with him at the meeting. I thought this was all that was involved.

Q Well, if I understood your evidence earlier, your answer to my learned friend Mr. McGillivray, you said, that you didn't discuss the letter sheets with Mr. Philipzyk?

A No, no.

I don't recall discussing this, at anytime, with him.

Q No, well, were you not concerning yourself with yes or no is there a debt?

A No, I didn't think that the Real Estate Board would be involved in collecting a debt. I wondered why they were, I wondered why this statement was being rendered.

Q Well, what I am getting at is what were you going there to fight about, whether there was a statement or not, a verbal statement about Mr. Kellough?

A No, I understood, no I understood that there were, that in conversation with Mr. Kellough's employees that he had made some remarks concerning money.

Q You didn't know who the employees were and Mr. Philipzyk told you that no conversation of that nature took place?

A That's right.

Q You weren't very concerned about the accounting aspect of it at all?

A No, I wasn't. In fact, I was quite surprised when it became the most important issue of the meeting.

Q You were going there to fight a slander, I presume?

A Well, frankly I didn't think, I really didn't know what the fight would be, if they could prove that this were so and I thought that this would be proven at the meeting that there would be nothing for him to do except to try to make the best deal possible so that he could continue working.

Q In other words, the Crown has all the evidence, he should make a plea?

A Right.

Q Well, then as I understand your evidence earlier, the issue seemed to begin right away with an accusation,

Q (Cont) a discussion whether he owed money and if so, how much?

A That's right.

Q This seemed to be the main issue, was it?

A That is correct.

There wasn't any attempt at all, that I could see to establish that Mr. Philipzyk had an opportunity to talk to these people and as I said before, I don't recall that the Risch house was ever mentioned.

As it was in this Hearing, I think it was established here quite clearly.

Q Where and when the conversation took place?

A No attempt was made at the Ethics Hearing that established an opportunity, at the Ethics Committee that, to establish that an opportunity was, did exist or for such a meeting.

Q I see. Well now, I thought you said most of the evidence was taken up with accounting matters?

A That's right.

Q Now, was there any discussions of Columbia Mortgages and various deals and this sort of thing?

A I never heard anything of that, or anything in connection with that until this Hearing.

Q What was it, was it just repetition that Philipzyk owed Kellough some money?

A That's right.

Q This was done by whom?

A Mr. Kellough.

Q What was Mr. Murray doing there?

A Well, actually Mr. Murray and Mr. Larson didn't get into the discussion until after, until after Mr. Philipzyk had been banned from the meeting and then they proceeded to describe things that had happened in their offices. It seemed to me that it didn't have any bearing whatsoever on the meeting.

Q At this time, they were talking about what, fights over individual deals, about commission or this sort of thing or what?

A Frankly, I could see no relationship to the, I think the conversation, at one time, was regarding his being loud and insulting the customers and things of that nature. The difficulties, such as they had to transfer him from one branch to another, one branch manager said he couldn't stand him anymore and had to ask Mr. Kellough to transfer him.

Q Did you protest about this kind of evidence being put before the Ethics Committee?

A Well, it is in my report that afterwards I tried to explain how Mr. Philipzyk had acted with me, and that at that point Mr. Haugen interrupted to say that he had a few complaints and it just seemed to

A (Cont) me that the committee was not particularly too much interested in what was going on, was not interested in going any further. They had already established, in their own minds, that Mr. Philipzyk owed the money and this seemed to be the point.

Q What gave you that impression, Mr. Walsh?

A Well, I wondered at the time why no attempt was made to try to establish that there was such a conversation that took place.

Q Yes.

A After the instruction of that letter to me, the Hearing took on a completely different attitude. Here, the matter seemed to me, to have moved from something which could be resolved in an Ethics Hearing, something that should be resolved in a Court of law because these were much more serious charges.

Q What were the more serious charges?

A Well, Mr. Philipzyk was alleged to have said that Mr. Kellough had blackmailed him or was attempting to blackmail him, this seems to me that this would be a very serious charge.

Q Well, then, what ought to have been done or dealt with by the Ethics Committee?

A Well --

Q In your own view?

A Well, I take the view that this man had never had an opportunity to be brought before this kind of tribunal in any case because these by-laws should not have been, they should have been improved in the first place.

Q Well, aside from that, what gave you the impression, you are there, now what gave you the impression that at a certain stage everything turned against Philipzyk?

A Well, I think that it was the introduction of the letter, the memorandum, in which case this is what the Commissioner has suggested that we call it.

Q Well, once that was introduced, then they turned to accounting, is that it?

A No, they discussed that. That was discussed for a while but very briefly.

Q Yes.

A But that was the point at which I realized that this Hearing was very, was a very serious matter.

Q Yes. Did you feel that you were out of your depth at that point?

A Absolutely.

Q Did you ask for an adjournment?

A No.

Q Did you think of it?

A No, I didn't.

Q Did you think you could get an adjournment?

A No sir, I am afraid that I didn't have enough experience.

Q Then, after Philipzyk was out of the room, Larsen and Murray testified, did they testify or how did they give this evidence?

A It was strictly conversation.

Q Well, one person would talk for a while and one person would interrupt, he was answering questions --

A That is correct.

Q Well, it was where one person posed a question and another would give an answer?

A No.

Q It wasn't answer and question?

A No. Then when I tried to defend Mr. Philipzyk Mr. Haugen came in and he made his remarks. This is the way that it was.

Q Were you cut off from making any statements?

A Well, not exactly because I couldn't see that there was anymore than a conversation in any case.

Q Were you accorded an opportunity to cross-examine these statements, these people who were making these statements?

A No, because there was no evidence to cross-examine on, there were no files introduced so that the the things that were alleged to have happened, in fact

A (Cont) did happen, it was just strictly conversation.

Q Well, as I understand it, then, at one point Murray and Larsen, was this after Philipzyk had been put out of the room?

A Yes.

Q They began to talk about various bad things that Philipzyk did while he was under their management in the office of Kellough Realty?

A That is right.

They began talking about why it was necessary to have him sent from one branch to another.

Q And you objected, there was no evidence of this?

A No, I did not, sir. I merely tried to defend Mr. Philipzyk to the best of my ability based on the transactions which he had completed for our office.

Q All right. Then when you said well he's a pretty good employee for me and he hasn't gotten into any trouble, was this the tenor of your remark?

A That's right. Furthermore, at no time was I ever shown a file.

Q Right.

A Where he was involved in a real estate transaction which was dishonest or even slightly --

Q Did you say, at no time did I ever see a file?

A I can't say that, no, I can --

Q Well, how did Mr. Haugen come to interject that he had some complaints on him?

A Well, I'm afraid he probably thought that I was trying to make Mr. Philipzyk appear to be, too angelic.

Q Yes. So, Mr. Haugen, at some point in there, Mr. Haugen said, well, I have got some complaints on him. Is that right?

A Well, as I finished speaking or as I was speaking, he said, that wasn't quite right, he said, that there had been a couple of complaints that had come before the Board and I said well, what are they, and he said, well, they were verbal complaints. There was no evidence put to the Board. I felt^{that}/this would have to prejudice the committee at that point because at that point, if they are impartial people and they are listening to this, they have to have some reaction.

Q Did you appear then subsequently, they reached their decision and did you appear before the Board of Directors on the 21st of December?

A No sir.

Q You did not appear there?

A No sir.

Q So, you don't know who was present at that meeting?

A No sir.

Q At the appeal before the general membership, you were allowed to put in your argument?

A Yes sir.

Q Was President Shaske presiding that day?

A Yes sir.

Q Then, who was the next speaker?

A Mr. Norman Murray.

Q Did Mr. Norman Murray, Mr. Murray was doing what, acting on behalf of Mr. Kellough?

A That is right, sir.

Q Mr. Norman Murray was a former director of the Edmonton Real Estate Board Co-operative Listing Bureau Limited?

A That is right, sir.

Q Was Mr. Fred Jensen at the general membership meeting?

A Well, I wouldn't know, sir. There were 277 people there, according to the official record.

Q Well, then when Mr. Murray was addressing the general meeting, he talked a great deal about medical insurance, what was that about?

A Well, this had to do with the premiums to the AETNA Life Insurance Company which Mr. Kellough kept in force while Mr. Philipzyk was in arrears to their company.

Q Had there been any discussion of this kind of thing at the Ethics Committee Hearing?

A Not to my knowledge.

Q You were there, there was no such discussion, was there?

A I don't recall anything that that came up at the Ethics Hearing.

Q Did it have anything to do with the charges against Mr. Philipzyk?

A I don't believe so.

Q This is when you objected, that this was character evidence being given at this stage and that it obviously came from a former employer?

A No sir, I had already said this prior to Mr. Murray speaking, when I spoke, I pointed out that the rejection of Mr. Philipzyk's application of the, in 1964, had been as a result of the Board ordering a credit and character report because the things that were said in this report were things that could only be said by a former employer. When Mr. Murray got up to speak, he mentioned in his speech, that in reference to what I had said, he said, he was the one who had supplied the credit company with this information.

Q Yes. Was the burden of Murray's discussion on the

Q (Cont) appeal about this insurance business or did he, how much of his time did he devote to that?

A I don't really know, I don't recall.

Q Well --

A The fact is, that he talked about it.

Q Then, Mr. Winterburn then spoke on behalf of the Ethics Committee, did he?

A On behalf of the Board of Directors, confirmaing the decision of the Board of Directors. He was speaking as a Director, as I understand it.

Q Did he go on for his full fifteen minutes?

A He went on for a considerable time, I would think that he used most of his time.

Q Well, what was he talking about, it wouldn't take him very long to say that the Board of Directors confirm that Robert Philipzyk be dismissed or suspended?

A Well, I recall that it was said that Mr. Philipzyk was the author of his own misfortune, as I said before, he referred to the fact that there was a letter that Mr. Philipzyk had written to the Co-operative Activities Branch and I had written to the Attorney General and I was not entirely flattered by some of the remarks that Mr. Winterburn directed my way.

Q Such as?

A Well, I don't recall, but they weren't too flattering. The main part of the argument of course, was that this was a decision of the Directors and therefore the members should support the Directors, they were being asked to support the decision of the Directors.

Q Yes. Was there any reason given why he thought that his decision might be right?

A No sir, there was no question of presenting to the appeal that there had been an opportunity for Mr. Philipzyk to have said these things.

Q Well, now, I think that you told my learned friend that he advised the meeting that he had a statement, a sworn statement, sworn before a Commissioner for Oaths?

A That is right.

Q Have you ever seen that statement?

A No sir.

Q Well, you don't know whether or not such a thing exists?

A No, we were told that it did.

Q It was never put in evidence at the Hearing that you were at?

A No sir.

Q Now, in 1966, Mr. Philipzyk worked for you until he was ordered suspended in June, how many months did he work then?

A That would be a total of five months.

Q Yes.

A That would be to the end of May.

Q Yes.

A Yes, the end of May.

Q Did he have any earnings in January and February?

A No. His first cheque was received in March which I think was a deal made in February.

Q Well, in any event, in the five months his earnings, from, in any event would be over \$3,113.

A That is right, sir.

Q That would be an average of a little over \$600 a month?

A About \$625 a month, approximately.

Q \$625 a month?

A Approximately.

MR. CAVANAGH: Thank you, that is all of the questions that I have.

MR. REDMOND EXAMINES THE WITNESS:

Q Mr. Walsh, I believe you told the Commissioner, the Commission Counsel, Mr. McGillivray, yesterday, in giving evidence, that Mr. Philipzyk was told to sit down on about three occasions while giving his evidence and that the reason given was his chair made too much noise on the floor each time

Q (Cont) that he stood up --

A No, no.

Q You didn't say that?

A Well, not directly, I said, I thought that might have been the reason that the members didn't, the people at the Hearing didn't rise everytime they spoke.

Q Well, didn't you tell us yesterday, that Mr. Philipzyk was told that that was the reason?

A No, no I didn't, no I didn't. I said, I said that I assumed that might have been the reason why they didn't do this.

Q What kind of a floor was there in the meeting room, do you know?

A I believe --

Q Well, was it tile, wood, rug, what was it?

A I don't recall, I used to be a Director in that room some two years before, and I should recall, but, I'm afraid I don't.

Q You don't recall that it was a heavy wool broadloom at the time of the meeting in December of 1965?

A It was. No sir, no sir, I don't recall.

Q Now, I believe Mr. Walsh, you were sitting at the corner of the table at the narrow end, at the Ethics Hearing?

A Yes sir.

Q Mr. Philipzyk was to your left, near the other corner?

A Yes sir.

Q I think that you said that Mr. Larsen was in the second chair around the side of the table that you were at?

A That's right.

Q Would that be the one that is marked HRK or --

A Well, Mr. Larsen was seated here and Mr. --

Q Your view would be the square that is marked HRK?

A About here.

Q About where the Murray chair is?

A Mr. Murray was over here.

Q Yes, on the other side?

A Yes.

Q Now, you said, I think, that at the time of the incident involving Mr. Larsen and Mr. Philipzyk, that Larsen came out of his chair and ended up behind you at the corner of the table?

A Past Mr. Kellough's chair and ended up down over here.

Q Yes. Slightly to your left?

A The door's over here, to my left, for this reason I didn't see anyone, I just looked straight ahead and I didn't see exactly what happened there, except I know Mr. Philipzyk got up --

Q He went around behind you too, you said?

A He went back. After that, I didn't see him.

Q So, they both ended up behind you, about here, about the corner of the table, back in the area behind you?

A Yes.

Q Mr. Philipzyk didn't exactly retreat across the room or anything like that, he went behind you?

A Well, as I saw him get up and move off backwards and then, of course, I didn't look any further. I saw him get up and go off. He was afraid.

Q The net result of his moving, was that he ended up closer to Larsen's chair?

A I doubt that.

Q He was behind you, and he wasn't behind you to start with?

A Well, he was back by the door.

Q Right. He had also moved towards the right-hand side of the room, looking from your end of the table?

A No, no sir.

Q Isn't that right?

A No sir.

Q You were at the right-hand corner of the table?

A That's right.

Q Well, he would have to move to that side of the room to get behind you?

A No, he would have moved, if he moved to the straight back, to the left, he would have been out of my view.

Q In any event, if you say he retreated, he didn't retreat very far?

A He retreated sir, he was afraid.

Q I see. Now, let us deal with the matter of earnings, that you have spoken of, Mr. Walsh, Exhibit 45 is Mr. Philipzyk's T4 slips and those would show his gross commissions, would they not?

A Yes sir.

Q Now, the statements that you have there, would you also show his expenses?

A Yes sir.

Q May I look at that please?

A 1964, and 1965 and '66.

Q Do I gather from these then sir, the salesman would have charged against the commission that he earned the gross commission that is shown on Exhibit 45, the various expenses he incurred, for example, the newspaper advertisements that were placed for his listings?

A Yes sir.

Q Also telephone calls that were involved in his attempting to make sales?

A Yes sir, long distance calls.

Q Yes, what about car expenses?

A Well, that would be part of his own responsibility as well.

Q That, would however be an expense incurred in income and would be charged against his commission?

A Well, we paid him his gross commissions as you will see there.

Q He would pay his own car expenses.

A He would pay his own car expenses, and these are his gross commissions paid to him by these cheques after deducting his business expenses, I'm sorry, these are a gross --

Q The T4 are gross?

A Gross, yes sir. These here are the net amounts after deducting office expenses.

Q The cheques that you have produced here?

A Yes, that's right.

Q Have you totalled those up?

A These should amount to the total of all these here, sir.

Q You say that these T4 slips, the cheques are net after office expenses?

A That's right, I'm sorry, that's right.

Q You haven't added up those?

A No, I haven't.

Q You haven't added up the debits and credits on his account to see how it comes out?

A No, I have not.

Q In any event, whatever it is it would be somewhat less than the amount of the gross commissions shown on Exhibit 45, right?

A That is correct.

Q Now, as a result --

MR. REDMOND: I wonder Mr. McGillivray if it might not be useful, though I haven't had a chance to look at the figures, to file these statements?

MR. MCGILLIVRAY: Yes, by all means.

MR. REDMOND: Might we file these --

MR. WALSH: Certainly.

MR. REDMOND: Might these be marked, sir?

FORM W3 S5657, LEDGER SHEETS
1965-66, MARKED EXHIBIT #59.

Q MR. REDMOND: I think that it is clear from Mr. Philipzyk's evidence that after the Ethics Committee Hearing in December, Mr. Philipzyk denied that he owed any money to Kellough Realty, is that right?

A (No answer.)

Q He made that statement?

A At the Ethics Hearing?

Q Yes?

A That, I couldn't say, I couldn't say that for sure.

Q Do you remember him saying at the Ethics Committee Hearing, I don't owe Kellough any money, Kellough owes me money?

A No, no.

Q You don't remember that?

A No, I don't.

Q Well, isn't it correct that Mr. Walsh, or do you recall, that at the Ethics Hearing there was considerable discussion on this question of whether Mr. Philipzyk had any money coming on commissions that had not been paid to him as yet, that was discussed, wasn't it?

A I don't recall that being discussed at all.

Q Well, specifically Mr. Walsh, don't you remember Mr. Murray being asked about the Krupman (phonetic) transaction at the Hearing?

A No, I don't recall.

Q Are you able to say that on that day the matter of Mr. Philipzyk, whether Mr. Philipzyk had commissions coming to him was not discussed at the Ethics Committee?

A No, I'm not prepared to say that sir.

Q All right. I think you said, Mr. Walsh, I have forgotten, you didn't see who took Mr. Philipzyk out of the room or how he got out of the room?

A No, I did not.

Q I think, you said, you didn't hear anybody tell him to go out of the room?

A No, I didn't.

Q As far as you are concerned, he may have gone voluntarily?

A I doubt that he would have but --

Q You don't know otherwise?

A No, I don't know otherwise.

Q All right. On this matter of the money owing, owed by Mr. Philipzyk to Kellough Realty or whether there was money owing, it is correct, isn't it Mr. Walsh, that Mr. Philipzyk's original answer to the complaint, he said, what Mr. Kellough says about money owing to him, isn't true?

A That was said in writing.

Q So, you knew from the beginning that that point was in issue?

A That's right.

Q Yes?

A Yes.

Q Now, you pointed out to the meeting, Mr. Walsh, I think you said the letter, at the Ethics Hearing, in December of '65, that there was a discrepancy in the date in the letter, the memo, that Mr. Olthius and Mrs. Hansen had signed and which was tendered to the Ethics Committee?

A Yes sir. I asked Mr. Kellough --

Q Who did you discuss it with?

A Mr. Kellough. He said that it was written about a month before.

Q Now, that was on the question of when it was written, you also questioned, did you not the fact that the memo began by saying, it was in August that we had a discussion with Bob Philipzyk etcetera, you questioned that discrepancy?

A Yes, because the original complaint was in June.

Q Now, someone at that Hearing must have been giving an answer to that point, do you remember who it was?

A I don't know who.

Q Well, someone did?

A I don't know.

Q You're not sure?

A No.

Q Well, do you remember whether it was Mr. Olthius, Mr. Kellough?

A No, I don't recall.

Q I presume therefore, you don't know what answer they gave?

A No.

Q Do you remember Mr. Olthius, at one point, saying to Mr. Philipzyk, don't you remember meeting me and Mrs. Hansen on that day in the car or something to that effect?

A Well, obviously this was a private conversation going on otherwise --

Q Did you hear it?

A No, I don't recall hearing it.

Q You don't recall?

A No.

Q No?

A No.

Q All right. Now, do you remember what time the Ethics Committee Hearing started on December 17th?

A Well, it was called for four o'clock, sometime in that area.

Q Well, what time did you leave?

A I have absolutely no record of --

Q It was around six or later?

A Well, I would say in the vicinity of 5:30 or something like that, I'm not sure, I really can't

A (Cont) recall at this stage.

Q It was quite a long hearing, wasn't it?

A I didn't think so, the time went fairly quickly, and you lose the tract of time in that sort of thing.

Q One perhaps loses tract of time as to how long Mr. Philipzyk was out of the room also?

A Well, as I would say, it might have lasted an hour and a half.

Q Is it possible that he was out about five minutes?

A Well, I doubt that.

Q Well, you won't catagore to say that is wrong?

A Well, I would say five minutes would definitely not be right.

Q Well, how about ten minutes?

A Well, even that is too short.

Q You can't remember how long it was, you said that it was longer than ten minutes, did you?

A Well, because of the things that happened, yes, which I know happened afterwards.

Q Well, that is what you say about Mr. Larsen and Mr. Murray had to say about Mr. Philipzyk while he was out?

A Yes.

Q That is the only way that you can judge how long he was out?

A Well, pretty, I would think that is a pretty fair way of estimating.

Q Well, now do you recall whether Mr. Haugen was with him while he was out of the room?

A No, Mr. Haugen came back in when he had, when we had this discussion, he was there.

Q Well, didn't that discussion take place after Mr. Philipzyk came back into the --

A Well, as you see --

Q -- The discussion about the other complaint?

A Oh no, no.

Q My information is that that discussion took place after Mr. Haugen brought Mr. Philipzyk back into the room?

A No, no.

Q You deny that, do you?

A No, this discussion took place while he was out.

Q Well, now I gather that what happened is that you made a remark to the effect that Mr. Philipzyk had a good record and you had no complaints about him, and that Mr. Haugen said, that isn't quite so?

A Something in that order, yes.

Q And then didn't Mr. Haugen go on to say that these were verbal complaints and that in any event they had nothing to do with the matters before the Hearing

Q (Cont) and therefore he said he would not elaborate on them?

A I don't recall that he said that, sir.

Q Do you deny that he said that?

A No.

Q All right. Now, did you ask Mr. Haugen to elaborate on those verbal complaints?

A I believe I did, but because they were, if they had any evidence of this and that is what prompted him to say no, they were just verbal, and --

Q Are you sure you asked him to elaborate on those and to tell you the subject matter of the complaints?

A Well, I couldn't go as far as to ask the subject --

Q So, would you ask him then, whether he really had such complaints or not?

A Yes.

Q And he said he did?

A Yes, but that they were verbal.

Q Yes. Now, you mentioned in, I think it was in your letter of December 20th, Mr. Walsh, that you felt Article 141 had some bearing on the question whether that statement from Mr. Olthius and Mrs. Hansen should have been received by the Ethics Committee, is that right, you mentioned here, I think, in one of your letters that you felt Article 141 had a bearing on it?

A No, I think that was in my appeal, I think you will find that I mentioned that, I don't think that I was, at the time, of the Ethics Hearing, I don't believe that I was aware of Article 141. That came across, I think I came across that when I was formulating the appeal.

Q I see. Were you aware of the provisions, at that time, of Article 139, which said that the Ethics Committee in its discretion may obtain and consider evidence from parties and witnesses by any or all of the following means, (a), signed statements in writing which are not sworn, did you know that the by-laws provided for such statements to be used by the Ethics Committee?

A If I did, I didn't consider it to be, it wasn't in front of me, I couldn't, I'm afraid I didn't know that it existed, probably.

Q You did have a copy of the by-laws of the organization, did you Mr. Walsh?

A Yes sir.

Q Would I be right in saying that all the agents and salesmen, members are provided with copies?

A Well, you might have been right several years ago but as far as I know this practice has not been followed in the recent years.

Q In any event, you had a copy?

A Yes, I had a copy.

Q Now, in your memorandum or summary of the proceedings of the Ethics Committee that is with your letter of December 20th, you make this statement in the last paragraph, that during the Hearing no attempt was made to examine Mr. Olthius on the wording of the letter that he had written describing the conversation with Mr. Philipzyk, six months before, you are speaking, are you of the subject matter of the conversation that is things that Mr. Philipzyk was alleged to have said?

A My feeling was that the memorandum was signed by Mr. Olthius and Mrs. Hansen was accepted, as evidence without being questioned and she had not been there to be questioned.

Q Did you question Mr. Olthius about it?

A Yes, I asked him if I, I satisfied myself that he had signed it and that that was his evidence.

Q Did you ask him if it was true?

A Yes.

Q Did you ask him what house, where it had occurred?

A No sir, I was not, my position is representing Mr. Philipzyk, not to establish and opportunity for Mr. Philipzyk to have committed some offences.

Q In other words, you made decision that I better not cross-examine Mr. Olthius too much because he might say the wrong things.

A Well, no, I just decided that it was up to the committee to establish what they have established.

Q So in any event it was your decision not to cross-examine him anymore on the contents of that memorandum?

A Right, if you want my opinion, sir, I went to the meeting with the probability that Mr. Philipzyk might be in trouble and I was prepared to do my best to get him out of it.

Q Now, you say in this memorandum, in the next sentence, a very important point is, that there was no attempt to establish that Mrs. Magda Hansen had actually signed the letter and that she was not present, she could not be examined, did you find out in that meeting in whose writing that memorandum was, did anybody ask, or did you ask is that Olthius's writing or is that Hansen's writing?

A Well, I established that Mr. Olthius had signed the letter but there was no one, there was no formality to establish that that even looked like her handwriting or to compare it with anything which I think would only be normal to establish

A (Cont) that there was even such a person as a Mrs. Hansen.

Q Did you ask Mr. Olthius if she had signed it?

A I don't recall no.

Q All right. Now, you were told, Mr. Walsh, sometimes before the general meeting in May, that the procedure to be followed was that Mr. Philipzyk's appeal would be presented first and then Mr. Kellough's answer would be heard and then the Chairman of the Ethics Committee would explain the decision of the Ethics Committee, is that right?

A You're asking me, whether I was informed by letter of the procedure?

Q Were you told of the procedure?

A I am not sure of that, I'm not sure whether that was conveyed to me by letter or conveyed to us at the meeting.

Q Well, you did learn enough about the procedure that you objected to the length of time, you stated that it should be longer than ten minutes each?

A That's right.

Q So, at that point, you knew, that there were three parties each having a ten minute, ten minutes to make his address?

A That's right.

Q You felt that it should be fifteen minutes?

A That's right.

Q Was that the only objection that you made?

A No, I felt that there should be a transcript or a tape recording something of that order to establish what was said at the meeting. I was very very much afraid that if the same things were said at that meeting that were said at the Ethics Hearing especially with the number of people that were expected to be present that it might be very damaging to Mr. Philipzyk.

Q What were you planning to do with the transcript of the appeal, if you had gone to it?

A Well, I had written a letter to the Attorney General suggesting that they should send an observer to the meeting.

Q Did you have some reason for doing that?

A Yes, I did because I felt that the Ethics Hearing should have never taken place especially under the conditions. No charge against any person should be heard anywhere where the accused does not have legal and proper protection.

Q Well, that was your reason, was it, that was your reason for contacting the Attorney General?

A That is right, sir.

- Q Didn't it occur to you that by writing to the Attorney General and writing to the Supervisor of Co-operative Activities before the appeal had even been heard, that you were suggesting that you weren't going to abide by the appeal or you weren't even going to consider a proper appeal before it was heard?
- A Well, I think that every citizen has the right to take every action he can take to prevent this type of injustice that existed under these by-laws.
- Q Well, wouldn't you normally complain to the Attorney General about the injustice after the appeal had taken place?
- A Well, what I was complaining to them, sir, was the injustice that took place at the Ethics Hearing.
- Q I thought you said you wanted them to come and hear the appeal?
- A That's right.
- Q You had taken the view that the appeal was, that the appeal was probably unjust and that the complaint came first?
- A I wanted them to hear what I had to say about the Ethics Hearing.
- Q Did you send them a copy of the memorandum of December 20th describing the Ethics Hearing?

A I have my letter to the Attorney General, here.

Q I am just asking you, did you send them a copy of your memorandum about the Ethics Hearing?

A Oh no, I am sure I didn't.

Q Would I be right, Mr. Walsh, you did send a copy of that memorandum to the Ombudsman?

A No, I did not. I sent him a copy of my report of the appeal, which I have here.

Q That is a different document, is it?

A Well --

Q We haven't filed that one yet, have we?

A You have not filed it, not to my knowledge, no.

Q Now, Mr. Walsh, you mentioned a number of people who were at the general meeting of Mr. Philipzyk's appeal, did any of those people leave before the appeal was heard or before the voting took place?

A I believe, that there were a number of salesmen who left, who didn't have a vote.

Q Do you know the people, do you know the ones that left, did you check them all, did you know that they were all non-voting salesmen?

A No sir, I did not.

Q In other words, all you know is that some people did leave, that is all you know?

A Yes.

Q I take it Mr. Walsh, you were aware at the time of the appeal was heard by the general membership that the routine that had been laid down for these appeals was to have appellant speak first then to have the complainant speak and then to have the representative of the Ethics Committee speak?

A A representative of the Board of Directors, yes, at the end.

Q Had you been at previous appeals where that same routine had been followed?

A I don't recall, I don't recall that I ever attended an appeal.

Q In any event, you knew that that was the procedure, you knew that was proposed, you knew, you told us earlier that no questions of submissions from the Board, from the floor were going to be received before the vote was taken, is that right?

A That's right.

Q You had agreed to that procedure or at least you hadn't objected to that aspect of the procedure?

A I don't think that is a definite laid down condition, it is not outlawed in the by-laws.

Q Well, weren't you aware that there was going to be no discussions, wasn't that made clear to you?

A The terms were that we were each going to be allowed

A (Cont) fifteen minutes but I tried to get discussion.

Q Well, I think you said --

A Lot of people were being asked to vote on something they knew nothing or very little about. Neither Mr. Murray, as it did turn out, neither did Mr. Murray or Mr. Winterburn refer to the logical reasoning, which should have been presented, as to how the conclusion was arrived at.

Q Well, do you say that at the appeal you asked for the right to have discussion from the floor?

A I proposed that some member might make a motion to that effect because it was in the by-laws.

Q Well, how did you --

A The procedure is not strict in the by-laws.

Q Well, how did you make that proposal, sir, was that part of your presentation?

A Yes, that was part of the presentation.

Q I see. Then you say Mr. Anderson went up and spoke to Mr. Shaske about it, did he?

A Yes sir, before the vote.

Q Did you hear the discussion?

A No, he told me, sir.

Q I see.

MR. REDMOND:

Sir, I still have quite a few

MR. REDMOND: (Cont) questions, might we --

THE COMMISSIONER: All right, we will adjourn
now.

HEARING ADJOURNS.

HEARING RESUMES.

MR. REDMOND FURTHER EXAMINES THE WITNESS:

Q Mr. Walsh, I would like to take you back for one moment to the Ethics Hearing in December, of 1965, you mentioned Mr. Philipzyk being out of the room for a period of time, would I be correct in saying that that was at the end of the Ethics Hearing, that it was close to the end of the Hearing and the Hearing ended shortly after he came back?

A Well, as I have said before, I thought that it was in the area of 25 minutes before the end of the meeting.

Q Well, in fact, would I be right in saying that by the time Mr. Philipzyk went out of the room, Mr. Kellough had presented his evidence, the statements had been put in, the letters had been put in, Mr. Olthius had been questioned and that Mr. Philipzyk had given his evidence, all of that had taken place before he had gone out, is that correct?

A I would like you to recite those again, so that I can get them.

Q Well, I asked you whether, that by that time the Kellough letter of complaint had been read in, Mr. Kellough had given his evidence, Mr. Olthius had been given a chance to give his evidence, and answered questions and his statement and Mrs. Hansen's statement were put in evidence and this had been discussed and Mr. Philipzyk had given evidence and said the things that he wanted to say, is that right?

A The only way that I can answer that question, sir, will be to start at the very beginning. You see, you're asking me to say yes to a lot of questions which happened in --

Q Well, perhaps I can help you, sir, is there any of those things that have not occurred by the time that Mr. Philipzyk went out?

A Well, you're suggesting to me that there was some formality to this Hearing in which people were given evidence, giving evidence to some direct line of questioning and this was not --

Q No sir, I didn't ask you that, I asked you whether or not all of those things happened in regard, regardless of how they happen, by the time that Mr. Philipzyk went out of the room?

A Well, Mr. Kellough had given his evidence, you said that Mr. Kellough had given his evidence --

Q Yes --

A Mr. Kellough had made a number of statements, and had produced his accounts and had discussed them, well, he had presented them, anyway, but there wasn't a direct line of questioning, there was no formality, there was no formality in other words to say that you are now the witness, and you will be prepared to answer these questions, and then turn to someone else and say you are now the witness, people were all speaking to each other at the same time, not addressing the chair, and --

Q Well, all right, let's stop for one moment please. While Mr. Kellough was having his say what was disjointed about what he said, do you mean that people were interrrupting him?

A No, he wasn't answering questions, he was making a lengthy presentation which was not in a way of being subject to questioning. You said he presented evidence as if he were subject to questioning.

Q Well, you questioned him, didn't you Mr. Walsh?

A Privately, he was seated to my right where I could talk to him.

Q Well, you asked several times during the Hearing, Mr. Kellough what is it you want at this Hearing?

A I asked Mr. Kellough, directly, he was seated beside me.

Q Yes. And did he say that so that the rest of the people in the room could hear it?

A Well --

Q You're not suggesting that no one else could hear that except you?

A No, I am not. At the same time I am not suggesting that this was a formal questioning addressed to the Chair saying, I would like Mr. Kellough to answer this question. This was a question that I asked Mr. Kellough because I wasn't sure whether just what his object was and I thought that we might work out some sort of understanding if the matter wasn't too serious.

Q All right, Mr. Walsh, are you going to answer my question or not?

A What was the question, sir?

Q Whether all those people had had their say before Mr. Philipzyk went out of the room?

A Well, they had spoken but whether, to say that they had given evidence is quite a different matter, sir.

Q All right, they had all spoken by the time Mr. Philipzyk went out of the room, is that what you are saying?

A Well, Mr. Larsen and Mr. Murray hadn't spoken to the meeting.

Q But all those people that I mentioned had?

A Well, Mr. Philipzyk had answered at least one question that I know of.

Q Mr. Philipzyk had also explained a lot of things himself, you're not suggesting that he never spoke except in answer to a question?

A No. No, I didn't think so.

Q All right, let us go on Mr. Walsh. I believe you heard Mr. Philipzyk say, I just ask you to confirm this, that during the Ethics Committee Hearing Mr. Philipzyk took this position, he said, I never saw Olthius before, I didn't have a conversation, the source that Olthius alleges?

A I cannot recall that he was asked a question directly on that point.

Q I didn't ask you if he was asked a question, did he deny that he ever met Olthius?

A I don't recall that he was asked sir.

Q I didn't ask you that, I said, did he deny that he ever met Joe Olthius?

A I don't know.

Q You don't remember?

A No sir.

Q Well, did he deny, at the meeting, that he owed Mr. Kellough any money?

A I don't recall that either.

Q Did he deny at the meeting that he had ever had conversation with Magda Hansen and Olthius, Joe Olthius in which he said that Kellough owed him money?

A I don't recall him saying that.

Q But do you recall him not saying that?

A No, I do not sir.

Q Mr. Walsh, I take it that when Mr. Kellough made the remark about Mr. Philipzyk, that we have heard repeated here several times, that your evidence is, that you didn't say anything about that at the time at all?

A No sir.

Q The situation as far as Larsen and Philipzyk are concerned is that Mr. Larsen came around this way and Philipzyk went to the back of the room, this way, they both moved from where they were and --

A Well, Mr. Philipzyk was here, got up and went back there and Mr. Larsen came around there, this side and I was in this position so, they were both behind me. There were a number of people there and Mr. Philipzyk was taken out.

Q Is that what you meant, when you refer to your memorandum --

THE COMMISSIONER: The bell didn't start for the first round, as far as I know.

MR. REDMOND: I beg your pardon, sir?

THE COMMISSIONER: The bell didn't start for the first round, as far as I know.

Q MR. REDMOND: That is what happened, would you state in your memorandum, that Mr. Larsen attempted physical violence --

A Well, he went after Mr. Philipzyk in my view.

Q He didn't touch Mr. Philipzyk, as far as you know?

A No.

Q Mr. Philipzyk didn't lay a hand on him either?

A That is right.

Q That is the physical violence that you are talking about?

A Well, yes sir.

Q Now, Mr. Walsh, were you ever a Director of the Edmonton Real Estate Board Co-operative Listing Bureau Limited?

A Yes sir.

Q When was that?

A 1963.

Q While you were Director, did you move any motion that the by-laws ought to be changed in any way?

A No sir.

Q Well, were you unhappy with them then as you are now?

A Well, I couldn't see anyway that we could get out of it, I had a history of the one who fired the first shot in 1957.

Q Well, you have been opposed to these by-laws in 1957 --

A That is correct, sir.

Q You have never changed your view about them?

A That's right. The Commissioner has a copy of the circular that I put out in 1957 and passed out to two hundred members of the Board in which I have taken objection that these by-laws be adopted.

Q So, you had made your opposition known since 1957?

A No sir, there was no way that I could see. The directors provided their own opportunity and this is it.

Q The fact is, that you have made known your opposition to the by-laws on many, many occasions since 1957?

A Officially, no.

Q Well, you have let anyone who wanted to listen to you know that that was your view, didn't you?

A Well, specifically since the Ethics Hearing I would say.

Q Well, before that too, didn't you Mr. Walsh?

A I don't recall that I, that prior to the Ethics Hearing, such as what happened in 1957.

Q In any event, since 1957, you have been of the view that salesmen should not be members of the Bureau and they should not have a vote?

A That is correct.

Q Now, do I understand you to say that the salesmen don't really take much interest in this organization and don't really take part in it?

Would that be your view?

A Well, the inducement to salesmen which was put in effect, I believe, it would be about 1963, to subsidize the luncheon meetings and to have a fifty dollar draw for listing salesmen and selling salesmen resulted in a sharp upswing in the attendance of these meetings, because officially where they have no participation in discussion and no vote there really is no reason other than the subsidized meal and the draw for fifty dollars.

Q Would you agree with me that the average attendance of the general meeting of the Board is over 300 members per meeting?

A That is correct.

Q How many meetings are there per year?

A Approximately ten.

Q You would think that an average attendance of about three hundred persons at ten general meetings a year indicate a lack of interest?

A Well, it's somewhere to go for lunch and someone is paying part of the shot and they also have the chance to pick up fifty dollars if they are in the listing box or selling box and --

Q Well, do you take the view that there is no business discussion in these meetings and that these men just go there for the meal and draw?

A Well, I have suggested in my brief, that if the Commissioner will take the point, take the minute covering several years back he could probably count on his fingers, well, even if we went back seven, eight years, he could probably count on his fingers of one hand matters which had been voted on by salesmen and this is precisely the number of times that the agents have been allowed to vote on anything except the election of officers.

Q Well, Mr. Walsh my question was whether or not anything is discussed at these meetings apart from the draw and the eating of the meal?

A Well, usually they have a speaker which of course precludes the discussion series business.

Q You have a business discussion or session at every

Q (Cont) meeting, don't you?

A Well --

Q Don't they? Whether it is long or short, they do have a business discussion or session, don't they?

A Well, usually they have hand-out certificates the salesmen who have won some contest or other. The President makes a report, the participation of the members is practically nil.

Q But in fact, they do get reports at the general meeting from the executive as to business of the Board?

A Well, not at the annual meeting, the whole meeting is taken up with reports by committee chairmen and no time is allowed for discussion. These reports should properly be mailed out to the agents and then they would be subject to discussion at a general meeting.

Q Well, in fact sir, I think you told me a moment ago, that at every general meeting the President makes a report?

A Not generally matters of business, sometimes he --

Q What about?

A Sometimes it is matters on production.

Q Sales statistics?

A Possibly.

Q Well, isn't that the business of a real estate man?

A Well, if you were at an agent's meeting sir, I think that you would find matters, that there were matters much more serious, such as I said before, the practices of some of our members who are direct mortgage lenders and who advertise, list with us, we have money to lend. Well, who do they represent, do they represent the lender or do they represent the person whose money is invested?

Q Well, that is a particular matter that they should discuss?

A Well, it was up for very serious discussion before these by-laws were passed which precluded the discussion at any, and any serious business, at any time.

Q Well, that may be an example of a particular matter, but I am just asking you generally whether or not the members of this Board don't indicate considerable efforts and turn out a considerable number at the meeting?

A The by-laws preclude any interest by the members in the actual government and administration of the Board because this is precluded by by-law 57.

Q Are you referring to the by-law that says, the

Q (Cont) government and administration of the Board should be invested, vested in eleven Directors?

A Precisely, sir.

Q What about the committees, Mr. Walsh, I understand this organization has a number of committees?

A Well, they used to tell us at one time, who the Chairman of the committee was, this is a practice which with they haven't bothered to tell us anymore.

Q Do any salesmen sit --

A I don't know sir. We are told at the end of the year, if you go, you will hear that Mr. so and so Chairman of that committee, but at one time they used to advise you at the beginning of the year who the Chairman of the committee was and who the members were.

Q You go to all of the meetings, Mr. Walsh?

A No, I don't.

Q Do you go to very many?

A Well, I have been to the last three, I have been waiting precisely if there would be any questions in regards to this Hearing.

Q All right, let us leave this Inquiry for one moment. Let us go back to before that. Before this particular matter came up, did you go to many meetings?

A No I didn't, because I received the agenda and

A (Cont) generally there was nothing on of interest because all it was was a presentation of prizes and a speaker.

Q Mr. Walsh, you don't go to many meetings, you're very unhappy with the Constitution, you don't like the way that the Directors are running the organization, but you are still a member, why don't you quit?

A The multiple listing service, as you know, is sufficient attraction to any member and this was the object of the take-over in 1959.

Q Take-over what, by whom?

A By the Society, by the members of the Society who put these by-laws in.

Q Now, who took over what, Mr. Walsh?

A It was called amalgamation, sir.

Q Well, the organization, the ~~World~~ Co-operative, was controlled by agents?

A That is right.

Q The new one is --

A No, it is not, sir. It is controlled by the Directors.

Q You say that the Directors could not control the ~~World~~ Co-op?

A That is right.

Q Oh, I see.

A The supreme power at any general meeting was the general meeting.

Q Mr. Walsh, is that clause that you read me, Article 57, is that the big difference?

A The interpretation of it, certainly is.

Q Well, I would like to read to you sir, by-law #2 of the supplemented laws filed in 1952, the government of the Bureau shall be vested in the Board of Directors consisting of nine active members, and then I would like to read to you --

A Hmm mm.

Q The government and administration of the Board shall be vested in eleven Directors, elected from the membership of the Board --

A How does the first one read, sir?

Q The government of the Bureau shall be vested in a Board of Directors consisting of nine active members and this one reads the government and administration of the Board shall be vested in eleven Directors, elected from the members, membership. That is the big difference, is it?

A No, there are other by-laws there.

Furthermore, it is the interpretation, I have heard that this --

Q Well, your big problem is that you don't like the way the Directors are running or interpreting the by-laws, or running the organization, is that it?

A I don't like the distant franchisement of the agents and I say that any general meeting, as it was, you would probably have^{to}/examined that to find out what the powers of the general meeting is, but the practice here is that, at any general meeting very little is discussed and that is taken very liberally that the Directors exercise all the powers of the Board. Article 58, of the, of our present by-laws, says --

Q Yes?

A Will you read it, sir.

Q Except as otherwise provided that the Directors shall exercise all the powers of the Board.

A Yes.

Q Is that the article to which you object to also?

A Yes, this is another one that it is in.

Is that in the other one also?

Q Well, if you have made that objection, sir, you ought to know if it was in here, wouldn't you?

A No, I don't know, but I know that the practice previously was that the authority did not exercise entirely by the Board of Directors.

Q You say then that these by-laws provide that powers not all exercise by the Directors?

A It never was.

Q Well, can you tell me what is in the old by-laws about that or can't you?

A No, I can't at the moment.

Q Well, you don't really know the difference at all, do you?

A I know what it was.

Q Well, I will read it to you?

A Yes, okay.

Q It shall be the duty of the said Board, Directors to direct and supervise the business of the Bureau, they shall exercise all such powers as are not required to be exercised by the Bureau in general meeting?

A Yes, that is something.

Q Are there any powers that the Board can exercise under this Constitution, that they can't under the new one?

A The general meeting under the present by-laws doesn't get to deal with any questions, because the Directors reserve those questions entirely between themselves.

Q Well, what is there in that set of by-laws, that makes any difference about that?

A Obviously, the one you have just read.

Q Is there anything in there that says that the general meeting shall exercise any particular powers?

A Well, I have always understood that the general meeting exercise all the powers, is the supreme authority.

Q Well, that is the basis of your complaint, is it, that is really the heart of your whole complaint?

A This is one, yes, one of the features.

The fact that at a general meeting people are not open to discuss the business of the Board.

Now, under the 1969, pardon me, 1966 in January, I talked with Mr. Shaske, and I proposed to him that I should bring up this question of Mr. Philipzyk at a general meeting because I was dissatisfied with the formula --

Q With the formula?

A Yes, of the Hearing.

Q Which Hearing, the Ethics Hearing?

A The Ethics Hearing, the lack of formality, the lack of formula and he told me that I would be on very dangerous ground if I did that. So, I telephoned Mr. Webber of the Co-operative Branch and asked him the question and he said at a general meeting you can bring up any questions.

Q Did you bring it up?

A No, he told me that I was on dangerous ground, I understood what he meant.

Q What was the danger?

A I would prefer not to test it, sir.

Q So, you didn't bring it up in any event?

A Obviously.

Q Do you know of anything in the Constitution that prevented you from bringing it up?

A I was afraid of sanction, sir.

Q You were afraid of sanction on the simple basis of statement, of the sort you had described to Mr. Shaske?

A That is right.

Q Was there ever any sanction taken from you by the Board?

A Not to my knowledge. I should say, no.

Q No one has tried to do anything to you since you championed Mr. Philipzyk's cause in 1965 and '66, you are still an official member of the Board and in good standing?

A That is right, sir.

MR. REDMOND: That is all, thank you
Mr. Walsh.

MR. BOWEN: No questions, sir.

MR. MCGILLIVRAY:
you.

That is everything sir, thank

THE COMMISSIONER:

Thank you Mr. Walsh.

MR. WALSH:

Thank you.

THE COMMISSIONER:

Well, we won't achieve very

much in ten minutes so -- do you want to quit?

MR. MCGILLIVRAY:

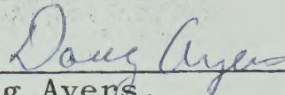
I think so, sir.

THE COMMISSIONER:

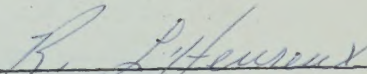
All right.

HEARING IS ADJOURNED UNTIL THE 29th JUNE, 1970, AT 10 A.M.

Certified a correct transcript,



Doug Ayers,
Official Court Reporter.
(Pages 1 - 78)



R. L'Heureux,
Official Court Reporter.
(Pages 79 - 143)

Edmonton, Alberta,
August 13th, 1970
ht/10

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